

TOWNSHIP OF LONG HILL
PLANNING BOARD

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IN THE MATTER OF:

TRANSCRIPT

Application No. 19-13P
PRISM MILLINGTON, LLC
50 Division Avenue
Blocks 12301/10100 Lots 1/7.01
Major Preliminary and Final
Site Plan

OF

REMOTE PROCEEDINGS

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Tuesday, November 10, 2020
Zoom Remote Hearing
Commencing at 7:58 p.m.

BOARD MEMBERS PRESENT:

DAVID HANDS, Chairman
THOMAS JONES, Vice Chairman
BRENDAN RAE, Mayor
JOHN FALVEY
VICTOR VERLEZZA
TOM MALINOUSKY
J. ALAN PFEIL
DENNIS SANDOW

A P P E A R A N C E S

JOLANTA MAZIARZ, ESQUIRE
Attorney for the Board

DECOTIIS, FITZPATRICK, COLE & GIBLIN, LLP
BY: FRANCIS REGAN, ESQUIRE
Attorneys for the Applicant

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1 A L S O P R E S E N T :

2 DEBRA COONCE, Planning & Zoning Board
3 Coordinator

4 ELIZABETH LEHENY, Township Planner

5 MICHAEL LANZAFAMA, Board Engineer

6 ROBERT FOURNIADIS (Previously sworn)

7 PAUL DeVITTO (Previously sworn)

8 MATTHEW SECKLER (Previously sworn)

9 ANGELA ALBERTO (Previously sworn)

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1 CHAIRMAN HANDS: Okay. Next item is
2 the continuation of the application, major
3 preliminary and final site plan. It's Prism's
4 application at the site known as Tifa.

5 I think we had a stopping point last
6 time. We rushed again into the last 15
7 minutes and I'd like us not to do that again
8 because that's the second time we rushed at
9 least at the end of the meeting. So let's be
10 conscious of the time.

11 VICE CHAIRMAN JONES: I'll give you
12 a heads-up at 10:15.

13 CHAIRMAN HANDS: Thank you. I know
14 we added there were a couple of comments and
15 people wanted to get questions in from the
16 public, but I don't want us to put ourselves
17 in the position of rushing the last few
18 minutes. So, thank you. That would be great.

19 Okay. Deb, how about you or Jolanta
20 just take up the next -- sort of where we left
21 off from the last meeting and what's next?

22 COORDINATOR COONCE: Yes. Do you
23 want to go ahead, Jolanta?

24 MS. MAZIARZ: Sure. I had just
25 reread the portion of the transcript from the

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1 last public hearing on this application and
2 the Board made a motion, seconded that motion,
3 and that motion carried to limit any further
4 testimony to only the planner that had been
5 retained by Mr. Kaufman at the time at the
6 last hearing. At the last hearing, we heard
7 Mr. Kaufman give testimony. And Mr. Kaufman
8 asked the Board to carry this hearing to this
9 date so that his planner -- Mr. Pessolano, I
10 understand, is the planner, Debra?

11 COORDINATOR COONCE: From the last
12 that I heard from Mr. Kaufman, yes, I believe
13 that is --

14 MS. MAZIARZ: Okay. So he asked
15 that the Board carry the hearing to this date
16 so that Mr. Pessolano could testify on behalf
17 of Mr. Kaufman, who is apparently objecting to
18 the application.

19 If the Board wishes to open
20 testimony to anyone else, the Board will need
21 to revisit that motion in order to open
22 testimony.

23 Members of the public have now had
24 nine hearings, not counting this one, this is
25 the tenth, to present objector testimony. We

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1 made that clear on the record at the last
2 hearing, that any members that were not
3 present at the last hearing have been
4 foreclosed from presenting any more testimony.
5 Everyone except for Mr. Pessolano, because
6 that request came to the Board in writing and
7 the Board was very well aware that
8 Mr. Pessolano had a conflict at the last
9 meeting date and was only available today.

10 So the Board has made itself
11 available and made this hearing date available
12 to hear Mr. Pessolano testify as a planner on
13 behalf of the objector, Mr. Kaufman.

14 I understand, also, that an attorney
15 has been retained at this hour. So I imagine
16 that it will be the attorney that will be
17 presenting the expert for the objectors.

18 CHAIRMAN HANDS: So what are you
19 looking first to do right now, then, Jolanta?
20 Are we moving on or do we have to do something
21 or was there some --

22 MS. MAZIARZ: Well, unless the
23 applicant has anything to add to that, I think
24 that we should get on with the testimony of
25 Mr. Pessolano for whom this hearing date has

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1 been set aside.

2 MR. REGAN: Mr. Chairman, I agree
3 with the Board attorney's statements and I was
4 prepared to make the same statements. And I'm
5 aware, also, that the objectors may have
6 retained counsel. And I would ask, when he
7 does make an appearance, that he put on the
8 record who he's representing because I don't
9 know if it's just Mr. Kaufman or others.

10 CHAIRMAN HANDS: Okay.

11 MR. REGAN: I guess one last point
12 while -- before we proceed, because I
13 understand, because we were provided copies of
14 public exhibits that Mr. Kaufman presented,
15 but I think consistent with the Board
16 attorney's summary of the Board's action at
17 the conclusion of last month's meeting, we
18 would object to Mr. Kaufman being given the
19 opportunity to provide further objector
20 testimony based on the public exhibits he
21 submitted since he had, you know, extensive
22 period of time to do that two hearings ago.

23 And, in fact, in his testimony,
24 which is reflected in the transcript from that
25 meeting, he indicated that he was through with

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1 his professional testimony until public
2 comment.

3 MS. MAZIARZ: However, I will say if
4 the Board members would like to rescind the
5 prior motion, if there's any reason at any
6 time during this meeting that Board members
7 wish to hear more from other witnesses, the
8 Board can always -- is always permitted, of
9 course. This is -- you know, you're in
10 charge -- to make another motion and permit
11 others to testify.

12 And I think that before we get into
13 the testimony, I think that if any Board
14 members have an opinion on any of this, that
15 you should be able to go first, before anyone
16 else makes any introduction or gives any
17 testimony. If any Board members have any
18 comments about what has transpired up until
19 this time, then, Board members absolutely
20 should be given the first opportunity this
21 evening to air any of those comments on the
22 record.

23 CHAIRMAN HANDS: Thank you. So just
24 to be clear, then, if we wanted to hear from
25 other folks --

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1 MS. MAZIARZ: Yes.

2 CHAIRMAN HANDS: -- we would have to
3 undo -- or have another resolution, go back on
4 what was said before. Could we table that
5 until a later point in time and see how the
6 discussion goes or is that something we have
7 to decide before?

8 MS. MAZIARZ: No. The Board -- the
9 Board can decide right now if that's something
10 that you are -- you would like to do at this
11 time. That's perfectly acceptable. If the
12 Board, at any time during this next portion,
13 would like to ask questions or needs more
14 clarification, there is nothing that precludes
15 the Board from accepting or asking for more
16 testimony from Mr. Kaufman or from anyone else
17 that may have relevant testimony.

18 CHAIRMAN HANDS: Okay. Thank you.
19 Is that clear to the Board members
20 and does anybody have any opinion about that
21 situation? Address it now or address it
22 later?

23 BOARD MEMBER SANDOW: Later. I
24 propose that we hear the remainder of
25 Mr. Kaufman and his expert's testimony before

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1 we start into any discussion.

2 CHAIRMAN HANDS: To be clear, the
3 point here is whether Mr. Kaufman is able to
4 speak without us going back on the resolution.

5 VICE CHAIRMAN JONES: I'd like to
6 hear what Mr. Kaufman has to say.

7 MS. MAZIARZ: Well, that's within
8 the Board's purview, but the Board has to
9 agree to rescind --

10 CHAIRMAN HANDS: Anyone else?

11 MS. MAZIARZ: -- the decision that
12 was made the last time.

13 VICE CHAIRMAN JONES: Yeah, I'd like
14 to hear what Mr. Kaufman has to say and what
15 his planner has to say so this way I can get a
16 holistic view on exactly everything that's in
17 question here so that we, as the Board, can
18 decide on the outcome, on how to take this
19 forward.

20 BOARD MEMBER MALINOUSKY: I agree
21 with Mr. Jones.

22 MS. MAZIARZ: Okay.

23 MAYOR RAE: I'll make the motion.

24 BOARD MEMBER SANDOW: I'll second
25 that motion.

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1 COORDINATOR COONCE: All in favor?

2 (Whereupon, a voice vote was taken;
3 chorus of "ayes" heard.)

4 COORDINATOR COONCE: Any opposed?

5 Motion carries. Okay.

6 So I'm going to bring Mr. Kaufman in
7 as a panelist so we can see him as well, and
8 then he will let me know. I think his
9 attorney is Rob Simon.

10 Mr. Regan, is that -- do you know?

11 COORDINATOR COONCE: Yes.

12 MR. REGAN: Again, I just want to
13 emphasize the applicant objects to this. And
14 we would request, if the Board's going to hear
15 Mr. Kaufman and his planner, that you proceed
16 with hearing his planner first, which is what
17 you said you would do, before hearing
18 Mr. Kaufman again.

19 CHAIRMAN HANDS: Jolanta, is that a
20 fair request?

21 MS. MAZIARZ: Of course, but it is
22 up to the Board. If the Board would like to
23 hear Mr. Kaufman, the Board is certainly
24 within its right to hear Mr. Kaufman as well.

25 VICE CHAIRMAN JONES: Can we hear

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1 Mr. Kaufman, please?

2 COORDINATOR COONCE: Mr. Kaufman, do
3 you have a planner here with you tonight?

4 MR. KAUFMAN: I do, yes.

5 COORDINATOR COONCE: And that
6 person's name is -- oh, that's Mike Pessolano,
7 right there. Okay. I'm going to bring him in
8 as a panelist, too. And based on the
9 conversation of the Board, I'm confused as to
10 whether I should bring in --

11 CHAIRMAN HANDS: Mr. Simon, do you
12 have to bring him in as well?

13 MS. MAZIARZ: Yes.

14 COORDINATOR COONCE: Okay. And I'm
15 going to bring Mr. Simon in as well.

16 CHAIRMAN HANDS: Do I presume it's
17 actually best to hear from the attorney first?

18 MS. MAZIARZ: Yes.

19 CHAIRMAN HANDS: So could we just
20 start with Mr. Simon.

21 MS. MAZIARZ: Yes. I heard the
22 applicant make the request that Mr. Simon put
23 on the record who precisely, who exactly, he's
24 representing in this action, in this hearing.

25 MR. SIMON: Good evening.

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1 CHAIRMAN HANDS: Does he need to be
2 sworn in or anything? Or he's an attorney,
3 it's not necessary.

4 MR. SIMON: Good evening, everyone.
5 My name is Rob Simon. Always good to be
6 before this Board. I have been listening,
7 eager to speak. Now that I'm on the, I guess
8 the, quote/unquote, panel, I, in response to a
9 question from Mr. Regan as to who I am
10 representing. So, again, I'm Rob Simon from
11 Herold Law in Warren. I am here on behalf of
12 the following people: Bill Kaufman, 1932 Long
13 Hill Road in Millington; John and Emily
14 Caputo, 1842 Long Hill Road in Millington;
15 Christina and David Berquist -- that is
16 B-E-R-Q-U-I-S-T -- 109 River Road, Millington;
17 and Pamela Ogens, O-G-E-N-S, 36 de Crescent,
18 Millington. Thank you.

19 MS. MAZIARZ: Thank you.

20 MR. SIMON: So can I -- I've been
21 listening with regard to some procedural
22 discussion with regard to the next step in
23 this hearing. And thank you for the motion
24 with regard to opening up Mr. Kaufman's
25 testimony or reopening it. And I actually

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1 believe, if you go back and you look at the
2 end of the last transcript, I think there was
3 ambiguity, at best, as to whether Mr. Kaufman
4 had completed or not.

5 But be that as it may --

6 MR. REGAN: I object and disagree.

7 And they should be looked at specifically
8 because it's clear what he said.

9 MR. SIMON: Mr. Regan, can I --

10 MR. REGAN: Yes.

11 MR. SIMON: Thank you.

12 So with regard to -- regardless, and
13 the record will speak for itself. So the
14 motion was made and the motion was passed.

15 In terms of the issue as to whether
16 Mr. Pessolano or Mr. Kaufman should go first,
17 I would respectfully submit, on behalf of my
18 clients, that in terms of having appropriate
19 continuity for purposes of this Board's
20 consideration of this application, that
21 Mr. Kaufman be permitted to complete his
22 testimony so that, again, there's continuity
23 in terms of the arguments that he's making,
24 which will include referencing certain
25 exhibits that he has provided to the Board in

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1 advance and that he will introduce this
2 evening, in fact, many of them in response to
3 either some questions or for clarification
4 with regard to some testimony that he was in
5 the process of providing.

6 So I believe that, respectfully,
7 that it would be of better service to the
8 Board and to the public that Mr. Kaufman would
9 go first to complete his section of testimony
10 in his role as a professional architect
11 witness before we proceed with the
12 professional planning witness, Mr. Pessolano.

13 MR. FOURNIADIS: Can I speak?

14 CHAIRMAN HANDS: I'm sorry, Bob. I
15 apologize.

16 MR. FOURNIADIS: Can I speak?

17 When Mr. Kaufman's testimony ended,
18 it ended, and the transcript does speak for
19 itself. And then he requested that we adjourn
20 and extend the application to this evening
21 just because his planner wasn't available at
22 the last meeting. We've been here for eight
23 meetings. All of our professionals have made
24 every meeting. His planner couldn't be at the
25 last meeting and we extended it to this

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1 evening just for purposes of his planner's
2 testimony.

3 And that's in the record and
4 everybody agreed to that and we agreed to that
5 and that's why we gave the extension at the
6 last meeting.

7 And now we're opening it up again
8 and I'm really wondering if this application
9 will ever end if we just keep reopening it.
10 Mr. Kaufman made his point. He doesn't like
11 our plan. He wants to design something that
12 looks like the building he's designing in
13 Millington that doesn't look like anything
14 else that exists in Millington, the Village of
15 Millington today.

16 And I just want to put my objection
17 on the record that this Board is going back on
18 what it agreed to last meeting and the meeting
19 before that.

20 MR. SIMON: Let me just respond to
21 that very briefly by saying the following: As
22 this Board knows, and has been doing this for
23 a very, very long time, that these types of
24 land use proceedings are not necessarily meant
25 to be adversarial. There's a case, an

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1 Appellate Division case, called Smith versus
2 Fair Haven, and I cite to it very often for
3 this proposition, which is it is not intended
4 to be an adversarial proceeding. The role of
5 the Board --

6 MR. FOURNIADIS: You could have
7 fooled me.

8 MR. SIMON: -- is to accept as much
9 information as is relevant so that the Board
10 can make an informed decision for the
11 interests of the public and in the interests
12 of the applicant.

13 So that is another reason, with
14 Appellate Division precedent, certainly beyond
15 the fact that you already voted on it, that
16 Mr. Kaufman, and we're ready to go with his
17 presentation, that he should be allowed to
18 proceed at this time and the Board can accept
19 what it wants to accept and reject what it
20 wants to reject.

21 MS. MAZIARZ: Okay. Just so we're
22 not belaboring the point, the Board has
23 already voted. Can we please proceed with
24 Mr. Kaufman. Mr. Fourniadis, Mr. Regan, your
25 objections are duly noted on the record. I've

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1 written them and I'm sure that your court
2 reporter has as well.

3 So without further ado, please let's
4 get Mr. Kaufman.

5 MR. SIMON: Thank you, Jolanta.

6 MS. MAZIARZ: Sure.

7 MR. SIMON: With regard to
8 Mr. Kaufman, I believe that he was already
9 qualified as a professional architect witness
10 before this Board?

11 MS. MAZIARZ: He has been qualified
12 and he has been sworn and he remains under
13 oath.

14 Mr. Kaufman, do you understand that
15 you remain under oath during this hearing?

16 W I L L I A M K A U F M A N,
17 having been previously duly sworn, remained
18 under oath and testified as follows:

19 THE WITNESS: I do.

20 MS. MAZIARZ: Thank you.

21 DIRECT-EXAMINATION

22 BY MR. SIMON:

23 Q. So, Mr. Kaufman, with regard to this
24 application and the testimony that you provided at
25 the -- at the last hearing, do you have additional

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1 information that you would like to provide to the
2 Board for its consideration with a description of
3 that information?

4 A. I do, yes.

5 Q. So why don't -- how -- do you want to
6 present these documents in any particular order,
7 Mr. Kaufman?

8 A. I think just for the sake of expediency,
9 I know everybody's anxious to move to the next
10 piece --

11 MR. FOURNIADIS: I'd like to ask a
12 question. I've looked at these plans. What
13 are these being presented for? Does
14 Mr. Kaufman want to represent us now and
15 present plans that we should develop on this
16 property? I don't understand the purpose of
17 this testimony. I'd like that explained to
18 me.

19 MR. SIMON: You know what? First of
20 all, I object to the applicant himself, which
21 is via a corporate entity, mounting
22 objections.

23 MR. FOURNIADIS: I'm an attorney.

24 MR. SIMON: Are you co-counsel for
25 purposes of this application? You're not.

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1 So -- so with regard to this application, if
2 there's going to be an objection, Mr. Regan is
3 an excellent attorney with a stellar
4 reputation, if there's an objection to be
5 made, Mr. Regan, who is the attorney of record
6 for purposes of this application, should be
7 presenting any objection.

8 MR. FOURNIADIS: And I thought you
9 said this wasn't adversarial.

10 MAYOR RAE: Actually, could I ask
11 something? Maybe it just adds to the
12 misunderstanding here. But I thought at the
13 end of last week's -- or the last meeting,
14 that Mr. Fourniadis had basically said, look,
15 I'm willing to look at other designs here and
16 if somebody comes to me within the two weeks
17 and shows me them, I'll consider them? Them
18 in good faith; but if I don't, then we move
19 ahead with the application as is.

20 Is that right, Mr. Fourniadis?

21 MR. FOURNIADIS: Yes, that's
22 correct. I did say that.

23 MAYOR RAE: And so why are we -- is
24 this what we're doing here? Is this the point
25 of Mr. Kaufman's testimony here? And, if so,

1 why wouldn't it -- why -- why, as I thought we
2 had agreed last meeting, wasn't it discussed
3 with the applicant before we're here tonight?
4 Or have we forgotten all about that and we're
5 moving on to some -- there's some other time
6 being taken here?

7 It's just I'd like to -- I was kind
8 of laboring under what I just stated and maybe
9 I'm misunderstanding from what I'm hearing
10 tonight.

11 MR. SIMON: Well, I have some
12 comment.

13 Mr. Kaufman, do you want to try to
14 tackle that and then I can respond as well?

15 MR. KAUFMAN: Sure. I think, you
16 know, we're a little -- there's some confusion
17 on my part and I think on the public part.
18 The end of the last meeting did, in fact, end
19 abruptly in the middle and in the midst of
20 public testimony. It is true that at the
21 meeting previous to last meeting, I had
22 concluded what I thought would be the end of
23 my professional public testimony.

24 However, a good portion of the last
25 meeting was taken up with back-and-forth

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1 between both Board members, the Board
2 attorney, and the applicant trying to
3 ascertain specific objections by the Board or
4 by the public with respect to architectural or
5 ordinance interpretations of what I perceive
6 to be of my testimony.

7 So it made sense to me to try to
8 illustrate -- because that's what architects
9 do -- in a very sort of comprehensive manner,
10 pictures of -- examples of what I was trying
11 to explain during my testimony with the lack
12 of exhibits, to show what could possibly be
13 conforming within the context of the
14 applicant's proposed development.

15 So that's why I thought it would be
16 good to bring some more exhibits in, allow the
17 Board and the applicant an opportunity to
18 respond to them, explain why some of these
19 options could -- would be conforming to our
20 ordinance and contrast those against what I've
21 objected to in terms of the current
22 application's nonconformity to certain
23 provisions of the ordinance.

24 So that's the purpose of putting
25 these exhibits on. And I could be relatively

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1 quick and could bring these in and then we
2 could -- you know, we could go to the planner
3 after that or whatever the Board's pleasure
4 is. But that was the intent. There was a lot
5 of discussion and question about what the word
6 "tweak" meant and it was back-and-forth with
7 the Board attorney and the applicant and the
8 representative from the applicant, trying to
9 define what that even meant.

10 So, you know, given the fact that
11 the applicant seemed open to the idea, and he
12 actually brought my name into it, specifically
13 said "If Mr. Kaufman wants to present a
14 design, you know, we'll look at that, too." I
15 think those were his exact words.

16 So this is that opportunity. You
17 have to allow me back in and discuss this if
18 that's going to, you know, actually happen.
19 So that's why we're here.

20 MR. SIMON: And let me just also add
21 from a legal perspective that certainly
22 Mr. Kaufman has already put on the record
23 objections with regard to certain aspects of
24 the design for this application, whether it's
25 violations of uniformity in architectural

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1 design or appearance standards, whether it's
2 building design standards, that certainly that
3 in that context, documentation and plans that
4 he's submitting to demonstrate that are
5 certainly relevant.

6 And, further, if an applicant, at
7 least in my experience, ever wished -- in this
8 case or any other case, wished to seek what's
9 called a design exception under the Municipal
10 Land Use Law for any violation of a design
11 standard that's set forth in the municipal
12 ordinance, that standard is governed by
13 40:55D-51B for preliminary site plan approval,
14 in which case the Board does have the power to
15 grant exceptions from the requirements of the
16 site plan ordinance as -- and what it says is
17 if it's reasonable within the general purpose
18 and intent of the provision of the site plan
19 review, provided that "the literal enforcement
20 of one of the provisions is impractical or
21 will exact undue hardship because of peculiar
22 conditions pertaining to the land in
23 question."

24 That what Mr. Kaufman is going to be
25 presenting, very quickly I may add, with

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1 regard to these documents and exhibits is to
2 demonstrate that these -- adherence to some of
3 these architectural design standards, you
4 know, is not impracticable and will not exact
5 undue hardship because of peculiar conditions
6 relating to the site.

7 So for that reason as well from a
8 legal perspective, they all -- you know, the
9 proffer is that they all are entirely relevant
10 and we respectfully ask, again, as I stated
11 earlier, let Mr. Kaufman introduce those,
12 present those, make them part of the record,
13 and then the Board can assess them as they
14 wish.

15 CHAIRMAN HANDS: And I think -- yes,
16 John, please.

17 BOARD MEMBER FALVEY: Can we agree
18 that Mr. Fourniadis is not going to agree to
19 any of these changes and then go on to -- I
20 think they're going to challenge whether this
21 is before the right board. Can we just cut to
22 that?

23 MR. SIMON: Well, I mean,
24 Mr. Falvey, we need some -- you know, whether
25 you're the applicant or the objector, an

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1 interested party, everyone has the right to
2 make a record. And certainly, you know, under
3 those circumstance, I think that even for the
4 couple minutes that he's going to present,
5 that he should be allowed to make a record.

6 BOARD MEMBER FALVEY: Yeah, I --

7 MR. REGAN: I will respond to
8 Mr. Falvey and I think the answer is yes on
9 behalf of the applicant.

10 CHAIRMAN HANDS: Okay. So before --
11 I'd just like to say I'd like to see this as a
12 constructive moment or two. Obviously
13 Mr. Kaufman spent time, you know, looking at
14 the designs and stuff, spent time and effort.
15 I think I take this as --

16 BOARD MEMBER PFEIL: I don't know
17 why --

18 CHAIRMAN HANDS: -- a constructive
19 attempt, a practical attempt, to maybe help
20 the public, you know, some thoughts that we
21 were last -- and I acknowledge that it's above
22 and beyond what we discussed. But I think if
23 we could get through this detail, maybe we'll
24 come out with an outcome and we'll see where
25 that takes us.

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1 So if we could just take this as a
2 positive constructive moment and work through
3 this and then see where we are. So let's just
4 combine the discussion if we can on this issue
5 at least.

6 MR. SIMON: Thank you, Mr. Chairman.

7 So with that, Mr. Kaufman, if you
8 want to -- how are you logistically doing
9 this? Is the Board secretary presenting the
10 exhibits?

11 COORDINATOR COONCE: Mr. Kaufman,
12 you should have -- as a panelist now, you
13 should have the ability. I'm happy to pull
14 them up if you like to, but you should have
15 the ability to share if it makes it easier for
16 you to move -- because that way you could move
17 your cursor around.

18 MR. KAUFMAN: Sure. Should I pull
19 them from the website? Is that the easier way
20 so that the --

21 COORDINATOR COONCE: Absolutely. I
22 would suggest pulling them from the website,
23 yes.

24 MR. KAUFMAN: Let me just grab those
25 quickly. Share screen.

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1 Is the Board seeing my screen, which
2 is the Town website here?

3 CHAIRMAN HANDS: Yes.

4 COORDINATOR COONCE: Yes.

5 MR. KAUFMAN: So I'm going to try to
6 bust through this a little bit here because I
7 know there's some concern over time on this.
8 So I'm going to be try to be respectful of the
9 applicant's time.

10 BY MR. SIMON:

11 Q. So, wait. Let me interrupt you, Mr.
12 Kaufman. In the interest of time, then, let me
13 just give you one instruction; that you've been
14 provided all the documents. So for each exhibit,
15 I want you to identify how it is marked, what it
16 represents, and the date of the exhibit and the
17 purpose of the exhibit that you're intending to
18 present to the Board.

19 A. Okay. All right. Again, I offered the
20 exhibits up as sort of a way to provide some
21 clarification on how some specific measures can be
22 taken to better conform to the ordinance with
23 respect to the architectural considerations that
24 were in my previous testimony.

25 So I have seven exhibits. So I'm not

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1 going to -- I'm going to call them by name for the
2 record of what they are. So proposed Public
3 Exhibit WK-1A, which is titled "Proposed Alternate
4 Elevations."

5 Q. No, no, no. You have submitted -- I
6 think you had one before that.

7 A. That one's already on the record,
8 though.

9 Q. Okay.

10 A. Yeah.

11 Q. So is this W -- is this WK -- what
12 exhibit is this?

13 A. WK-1A. It's entitled "Proposed
14 Alternate Design" copyright -- sorry, November
15 10th.

16 Q. And did you prepare this, Mr. Kaufman?

17 A. I did.

18 Q. Okay. And explain what this depicts.

19 A. Can I bring the exhibits in and then hit
20 them one at a time -- or hit them in summary
21 rather than do this --

22 Q. Whatever -- whatever suits your fancy.

23 A. I think it will just be quicker and
24 easier. We can then refer to them.

25 Q. Okay.

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1 A. So the second exhibit is WK-2.

2 Q. Well, what about 1B?

3 A. Sorry. I skipped one here. 1B --
4 WK-1B. They're out of order here a little bit.
5 So WK-1B, "Proposed Alternate Design Showing
6 Neighborhood Context." Again, dated November
7 10th, 2020.

8 The third exhibit is WK-2, "Proposed
9 Alternate Site Plan Comparison," dated November
10 10th, 2020.

11 Next exhibit, WK-3A, "Stone House Road
12 Comparison," dated November 10th, 2020. All these
13 exhibits prepared by me.

14 The next exhibit is WK-3B, Stone
15 House -- I'm sorry, "Division Ave. Comparison,"
16 dated November 10th, 2020.

17 WK-4A, "Aerial from North," which is
18 also dated November 10th, 2020.

19 And the final exhibit is WK-5A, site
20 plan, "Alternate Site Plan," dated November 10,
21 2020.

22 Q. And, Mr. Kaufman, you prepared each one
23 of these exhibits?

24 A. I did.

25 Q. Okay. So now what we need you to do is

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1 to go back and carefully explain what each depicts
2 and the purpose of you presenting it to the Board.

3 A. I will do that quickly. There are six
4 essentially salient points that I was making. And
5 these exhibits all try to clarify and illustrate
6 graphically what those were.

7 So the first point is with respect to
8 152.1B in the ordinance. We've been through this
9 a number of times. "All new buildings shall be
10 related harmoniously to the natural features of
11 the site."

12 THE REPORTER: Excuse me. Slow down
13 when you're reading, please.

14 THE WITNESS: Yes, ma'am.

15 A. 152.1B, which is part of the Long Hill
16 ordinance section that reads "All new buildings
17 shall be related harmoniously to the natural
18 features of the site."

19 So this exhibit, 3A, the intent -- we
20 heard from Mr. Sandow that the intent of the
21 portion of the ordinance in the last hearing
22 really pertained to the height with respect to the
23 grade along Stone House Road, that the natural
24 sloping features of the site provided -- or
25 triggered the authors of the ordinance to put in a

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1 provision to allow 35 feet -- 35-foot, three-story
2 buildings in order to accommodate for the sloping
3 grade.

4 So there was a lot of discussion on
5 this. We created this illustration with Figure 1
6 indicating the -- that was part of a previous
7 exhibit that I had put into the record, which was
8 essentially the applicant's design pasted onto a
9 model to give the Board a feeling for what the
10 Stone House Road area would feel like on the
11 western edge of the site, southwestern edge of the
12 site, with two 45-foot-high buildings on 22 feet
13 of fill.

14 And the illustration immediately below
15 it is the same picture of Stone House Road -- let
16 me just try to make this fill the screen -- with
17 buildings that are stepping with the grade.

18 So in summary, really, this is really
19 just an example of how -- an option where the
20 buildings could be split and then stepped to meet
21 the existing grade.

22 The current typical design that the
23 applicant has submitted is split -- each building
24 is split in two with a demising wall or a firewall
25 that goes vertically between the units, splitting

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1 the building essentially in half. So literally by
2 splitting the building just along that demising
3 wall, the layout of the interior spaces would
4 remain unchanged and the buildings that would need
5 to be constructed along a sloped area then could
6 essentially just be shifted in elevation along
7 that demising wall to allow it to gently slope
8 down with the grade along Stone House Road and it
9 would affect potentially up to five or so of the
10 total 14 proposed buildings.

11 Moving quickly to 1A, again, keeping in
12 the theme of 152.1B, "All new buildings shall be
13 related harmoniously to the natural features of
14 the site," the second phase of that is a run-on
15 sentence and followed by the words "and to
16 existing buildings and other substantial
17 structures in the vicinity that have a visual
18 relationship to the proposed building or
19 buildings."

20 And we talked extensively about this and
21 we crossed the applicant's architect, but
22 essentially what we were trying to explain was if
23 you surveyed all the buildings in Millington, and
24 mine happens to be one of them, it has nothing to
25 do with my building, contrary to what the

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1 applicant might believe, is that they are a
2 combination of masonry structures, brick and
3 stucco predominantly. There are no other
4 materials used on any commercial building in the
5 downtown Millington area, and our planner will
6 testify to this.

7 So what this exhibit purports to try to
8 illustrate is that -- and I'll preface it by what
9 I said during my testimony. In good planning and
10 development practice, buildings that are the scale
11 that the applicant had presented are not commonly
12 clad in clapboard or horizontal siding and
13 certainly not vinyl. Those materials are reserved
14 for smaller-scale single-family residences and
15 buildings of that nature.

16 So in this case, what we've illustrated
17 here is in order to relate harmoniously to the
18 predominance of the buildings that are in that
19 region and conform to the design standards that we
20 feel are in violation of 152.1B, the buildings
21 could be clad in masonry. And stucco -- and the
22 applicant had indicated that they would
23 potentially add more brick. So by just making a
24 few adjustments to the exterior, leaving the
25 interior exactly the same.

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1 There was a lot of discussion about
2 how these exteriors could be fenestrated a
3 little bit more differently rather than just
4 sort of an institutional layout of the
5 windows. And by creating some of these
6 aspect -- and, I'm sorry, I should be pointing
7 here. The lower drawing on this Exhibit 1A
8 indicates a Stone House Road elevation and how
9 it would be split. The dimensions and design
10 proportions are the exact same to which the
11 applicant had presented. The center of this
12 building is split along the demising wall to
13 allow it to step down with the grade along
14 Stone House Road.

15 All of the rooms on the inside have been
16 accounted for. So living rooms and master
17 bedrooms in the same exact locations. No walls on
18 the inside would need to be changed. This is just
19 windows, bay windows. The developer I'm sure has
20 a lot of experience with creating indoor/outdoor
21 environments, balconies, what have you. These are
22 all elements of design that are consistent with
23 residential -- quality residential development.

24 So that's what this exhibit was intended
25 to do, to portray. And you can see the mix of

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1 materials. It's simply just stucco and brick.
2 It's not complicated. Same kind of materials that
3 the developer had originally proposed. And,
4 again, the difference is that this one is not a
5 centrally organized scheme. It's just a
6 symmetrical one that provides a little bit
7 difference. This is just one example --

8 Q. Mr. Kaufman, when you say "this one,"
9 don't forget, we're doing this for Bridget, the
10 court reporter, so you have to identify what
11 you're referring to.

12 A. Sorry about that, yes. Correct. The
13 lower elevation on Exhibit 1A, which is the Stone
14 House Road elevation, shows the variation of
15 materials between stucco and brick.

16 And quickly to the next point number
17 four out of the six that I was trying to make.
18 I'll now move to Exhibit 3B, which is the Division
19 Ave. comparison. There are two figures on this
20 exhibit, Figure 1, which is part of a previous
21 exhibit that I had submitted, which shows the
22 applicant's original design in its context with
23 Building Number 8 in the foreground to the left
24 and then followed in the back with Buildings
25 Number 10 and 12, the ones that are in question of

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1 the height variance and conflict with the
2 ordinance.

3 And then Figure 2 shows -- the lower
4 right shows the same perspective, but with
5 Building Number 8 in the exact same spot, just
6 with a step-down design and the two varying
7 materials; and then, immediately to the north, a
8 two-and-a-half story structure.

9 The two-and-a-half story structure would
10 then obviously have a front yard and a front yard
11 setback facing Division Ave., not all that
12 dissimilar to the larger buildings presented by
13 the developer. But it's just here to illustrate
14 that a two-and-a-half story building, how that
15 would look on the -- in the context of Division
16 Ave. and how it would frame Division Ave.

17 The only other thing that is suggested
18 here is possibly, and this was discussed during
19 testimony earlier, that the perpendicular nature
20 of these buildings with the sides and the service
21 entrances facing Division Ave. as opposed to a
22 longer facade might better enhance the
23 streetscape. And we have discussion with the
24 applicant's architect about a streetscape village
25 kind of design.

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1 The fifth point would be back to Exhibit
2 1B. This fifth point is -- there was quite a bit
3 of discussion regarding the commercial building
4 and there was a willingness, it seemed, on the
5 applicant's part to redesign this building as a
6 condition of any approval.

7 So there was argument that was made
8 that the proposed commercial building doesn't
9 fully meet the intent of the definition for a
10 mixed use because that is the definition. The
11 name sake of the ordinance, MU-O, is mixed-use
12 overlay or mixed use ordinance. And so we
13 also heard some testimony that it might be too
14 small to make any kind of reasonable impact or
15 draw any traffic. I know the Board members
16 had brought some of this up.

17 So we had just taken a quick look at
18 this to see if the building -- and there was also,
19 by the way, just some discussion on making that
20 building more industrial and I think that the
21 applicant had asked what that meant because it's
22 really not an easily definable term. And there
23 was some back-and-forth with Mr. Fourniadis and
24 myself about trying to preserve some of the
25 existing building and that was not my intent.

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1 So this exhibit, 1B, this perspective
2 means to show that a more industrial-style
3 building that references the history of Millington
4 and the context of its scale on that street could
5 be achieved in that area.

6 In this particular case, we felt, and
7 one of the things that was discussed, was that
8 that building was a little too small and --
9 possibly the proposed applicant's building perhaps
10 was a little too small and maybe even apologetic
11 in terms of its size and its impact.

12 And so bringing it up to a 10,000-foot
13 footprint would give the applicant or the
14 developer substantially more rentable area and
15 more commercial space that's more meaningful.
16 Immediately to the west of that building in that
17 same location would be some kind of a quasi-public
18 plaza there. That was also discussed in
19 Mr. Caputo's testimony and I think some members of
20 the Board also were looking for a little more
21 public interaction.

22 So this is just an example of how that
23 could be achieved in that exhibit.

24 And then the sixth point, just kind of
25 in keeping with Exhibit 1B, was back to LU 135,

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1 uniformity and architectural design and
2 appearance. And it can be seen just in this
3 Exhibit 1B, there's a varied -- a variation of
4 these buildings. They're not just 14 exact
5 replications, although they are identical in floor
6 plan and building height, height and size and
7 area. They simply just swap some of the materials
8 back and forth and some of the bay windows. And
9 you can create -- it's possible to easily, without
10 any, you know, cost generative measures, to really
11 just add -- or just diversify the design and make
12 it little bit different rather than just one
13 single building repeated 14 times which I think
14 was seen as objectionable by certainly the public
15 and possibly some Board members.

16 You know, Exhibit 5A and -- WK-5A and
17 WK-2, I'll bring those up very quickly. These
18 two, WK-2 -- let me just go to Exhibit 5A, site
19 plan. The point of this exhibit, Exhibit 5A, is
20 really just to show that there wasn't a radical
21 change or departure from the applicant's design.
22 Every building -- one, two, three, four, five,
23 six, seven, eight -- all along the bottom and the
24 side remain exactly in the same place. There's
25 some topography changes to make it conform with

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1 Stone House Road.

2 The interior buildings are largely the
3 same except that we've created, in this particular
4 suggestion, just illustrate to show that all their
5 program would fit in here and you could get a
6 large more large -- a lot more meaningful open
7 green space, which is consistent with the master
8 plan goals with any new development. Sort of
9 promote more open and expansive green space.

10 We did this also just to do a double
11 count on the recount. I mean, there's been
12 testimony we feel the site is possibly way
13 overparked, but in this case, we have the exact
14 same number of parking spaces as the applicant
15 did. So -- maybe even a surplus of them.

16 So that's the -- that was the purpose of
17 these exhibits. I think it's -- the thing that
18 was left unsaid in a lot of these meetings is that
19 the people who are going to be living here are,
20 you know, also -- those future residents are also
21 going to be residents of Millington. I just think
22 that at some point their interests should be
23 represented as well. And the idea that -- you
24 know, we understand the developer has his needs
25 and wants to make this project go and we're all

1 supportive of him putting a responsible project in
2 here for certain, but I think it's important to
3 look at the full impact and what's possible here
4 rather than just what the bare minimum standards
5 is without breaking the law or even, in our case,
6 in the case of this developer, we think he is in
7 violation of a number of ordinances requiring
8 variances.

9 Q. So, Mr. Kaufman, do these exhibits that
10 you've presented now to the Board, they don't
11 adversely impact the number of affordable units
12 that would be on this site, correct?

13 A. No, not at all. In fact, there are
14 some -- if the units that we were discussing
15 along -- and I'm pointing here to Exhibit 4A, to
16 the upper left-hand corner of 4A. There's a
17 two-story, two-and-a-half story building there.
18 Then in the foreground on the northern side that
19 faces the railroad track, another two-and-a-half
20 story building. Arguably, that would reduce the
21 density of those two buildings by however the
22 developer would redesign them, whether the upper
23 or lower units. And those displaced units can be
24 easily located into the upper floor of the
25 commercial building and then providing some

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1 activity and some vibrancy to the commercial
2 building on the corner, making it a truly
3 mixed-use building.

4 MR. SIMON: I have -- other than to
5 move -- so the record is complete for purposes
6 of this application, I guess, since -- Bill,
7 you said Exhibit WK is already part of the
8 record?

9 THE WITNESS: Let me go back and
10 look. WK -- you know what? I don't know that
11 it is, but it doesn't need to be. There was
12 no testimony given on WK.

13 MR. SIMON: Okay. Do you want to --
14 do you want to present WK right now or do you
15 not want to?

16 THE WITNESS: Let's just say that
17 WK, Exhibit WK -- actually, I'm sorry, WK
18 was -- Deb, you did mark this in. This is the
19 one that we referred to. This is a series of
20 multiple drawings that I provided testimony
21 on. I thought it was just the first slide,
22 but it's a series of one, two, three, four,
23 five, six slides. It's a superimposition of
24 the applicant's engineering plan and the
25 applicant's architectural plans extracted from

1 the website and built into a three-dimensional
2 model.

3 The purpose of this exhibit was to
4 show varying views to the Board members
5 because Board members requested and members of
6 the public requested that the developer
7 provide alternative use, to which the
8 developer was not forthcoming with. So these
9 were provided as an answer to that request.

10 COORDINATOR COONCE: And they were
11 previously marked. The website should show
12 them as simply public exhibit, or just that
13 one. It's just public exhibit. The word
14 "proposed" should have been removed. So I
15 apologize.

16 MR. SIMON: No, that's okay. I just
17 wanted to clarify. Thank you for that,
18 though.

19 So I guess with that explanation,
20 you know, we would move Public Exhibit WK-1A,
21 1B, 2, 3A, 3B, I guess it's 4A, and 5A into
22 the record as established by foundation from
23 Mr. Kaufman.

24 And then, as well, of course, open
25 it up to any questions of Mr. Kaufman based on

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1 his testimony and any exhibits he just
2 presented.

3 CHAIRMAN HANDS: Thank you.

4 Thank you, Bill, for going through
5 that. I do appreciate the effort that's gone
6 into that and I'm just taking it at face
7 value, to be honest. But this is just some
8 considerations and thoughts about questions of
9 the design. Obviously you've gone a little
10 bit further than that.

11 So any Board comments or questions?
12 I'm open for them.

13 BOARD MEMBER MALINOUSKY: Just a
14 quick question about WK-3A, the Stone House
15 Road view. You mentioned that if you changed
16 the grades on the buildings, it would affect
17 four or five buildings. What buildings would
18 be affected? What numbers?

19 THE WITNESS: Yes.

20 BOARD MEMBER MALINOUSKY: And are
21 they all on Stone House?

22 THE WITNESS: It would really depend
23 on the final grading plan. My professional
24 estimation would be Building Number 5, which
25 is the building on -- if you're looking at

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1 Exhibit 3A, Figure 2, the one on the upper
2 left of that figure. So that's Building
3 Number 5. Six, seven, eight. And in the
4 concept that we had shown Building Number 9
5 rotated to this direction, possibly Number 9,
6 depending --

7 MR. SIMON: Bill, I'm sorry, when
8 you say "rotated to this direction," you need
9 to use your words to describe it for the
10 record. I'm sorry.

11 THE WITNESS: Yes, sir. Let's go to
12 Exhibit --

13 BOARD MEMBER MALINOUSKY: So
14 perpendicular to 7.

15 THE WITNESS: Right. If we look at
16 Exhibit 5A on the site plan, I mentioned, as
17 we're looking at this illustration, on the
18 western part of the site is Building Number 5
19 where the cursor is pointed. It follows
20 counterclockwise to Buildings 6, 7, 8. In the
21 applicant's version, Building Number 9 and 10
22 are located parallel to Stone House Road, one
23 layer deep.

24 In this proposed reconfiguration,
25 Building Number 9 has been rotated

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1 clockwise -- or counterclockwise 90 degrees.

2 So that building possibly, depending
3 on the final grading of this -- of the site
4 and how much, you know, additional retaining
5 walls and things, that would possibly. So my
6 estimation would be those five buildings.

7 BOARD MEMBER MALINOUSKY: Okay.
8 Thank you for that.

9 And then just one other question.
10 You testified that the number of Fair Share
11 Housing units wouldn't decrease. What about
12 the overall number of units?

13 THE WITNESS: No. Hundred -- still
14 the exact same density and the exact same
15 ratio of Fair Share to market rate.

16 BOARD MEMBER MALINOUSKY: Thank you.

17 CHAIRMAN HANDS: I can't see the
18 panel, so --

19 BOARD MEMBER SANDOW: It's Dennis.
20 Dennis has questions.

21 CHAIRMAN HANDS: Thank you, Dennis.

22 BOARD MEMBER SANDOW: Bill, would
23 you put 3A back on, please? Yeah.

24 In the applicant's site plan, the
25 buildings on Stone House Road are elevated

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1 above the road by a couple of walls, retaining
2 walls. And behind those retaining walls,
3 there's about 20- or 25,000 yards of fill.

4 You don't show that additional fill.
5 The applicant's -- the applicant's attorney
6 testified that the reason for the fill was to
7 level the site, which would make walking
8 around the site and driving around the site a
9 whole lot easier if is it were closer to being
10 flat.

11 By eliminating the fill, you've left
12 some slope here. And I'm wondering if you
13 would like to comment about the effect of the
14 existing slope on this development with regard
15 to walking and with regard to sloped parking
16 areas and so on.

17 THE WITNESS: Sure. You know,
18 they're -- it would be, you know, in a
19 perfect -- and Mr. Lanzafama said that the
20 plan that was submitted was an engineer's
21 dream insofar as I think he was referring to
22 how matters of grade and topography were
23 largely ignored and it was simply just a flat
24 site with all uniform heights and uniform
25 buildings and everything was exactly the same.

1 You know, I guess from a
2 build-ability standpoint or a walkability
3 standpoint, one could argue that makes it
4 easier. There are no steep slopes associated
5 with this whole entire -- with this existing
6 topography. Anyone who's had the opportunity
7 to walk that site or be around it could know
8 that it's walkable and driveable. There are
9 no requirements beyond the RSIS road pitch
10 that I'm aware of that would preclude the
11 development from being -- relating to existing
12 grades and topography. There's nothing too
13 steep that it would require steps and
14 sidewalks or those kind of things that could
15 be all engineered in.

16 The requirements for ADA are the
17 immediate vicinity of the handicap parking
18 spaces, to which we had quite a bit of
19 discussion on with the applicant's engineer
20 and maybe the architect, but I think it was
21 mostly the engineer. And the precincts around
22 those buildings could easily be manipulated to
23 accommodate ADA requirements.

24 So there's really nothing that would
25 preclude -- in fact, I would argue that this

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1 would save the developer a huge amount of cost
2 on infrastructure to step buildings as opposed
3 to building 22 feet of a series of stacked
4 retaining walls and compacting that fill and
5 attempting to try to keep those buildings
6 stabilized, on stabilizers. It's a tremendous
7 undertaking to try to level a site like this.

8 So, you know, it would seem to me
9 that it would be more practical to do it this
10 way. And I don't see any reason why it would
11 not be a walkable site.

12 BOARD MEMBER SANDOW: Bill, in the
13 earlier hearings, we discussed a sidewalk
14 along Stone House Road and I noticed you had
15 not shown one in this rendering either.

16 THE WITNESS: I'm sorry. The
17 rendering -- yeah, the rendering was -- there
18 was a saying in the movie Back to the Future,
19 "Forgive the crudeness of my model. I didn't
20 have time to make it to scale." I think that
21 there's a few things in the rendering that are
22 probably just sort of artistic interpretation
23 just for -- primarily for scale and impact.

24 But we did also notice that and
25 suggested at least along -- I'm looking now at

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1 Exhibit 5A on the lower southeastern corner of
2 the site. We have noted that perhaps a
3 sidewalk -- it would be appropriate to have a
4 sidewalk at least down to the entrance of the
5 community, the southern entrance of the
6 community, up to Division Avenue.

7 CHAIRMAN HANDS: Thank you.

8 Dennis, is that the end of your
9 question --

10 BOARD MEMBER SANDOW: I notice you
11 have dropped a few plastic trees into this
12 drawing.

13 Is there any -- anything in your
14 plan that would limit the number of trees that
15 are planted to conform to the landscaping
16 ordinance?

17 THE WITNESS: No.

18 BOARD MEMBER SANDOW: Thank you.

19 That's all I have, Mr. Chairman.

20 CHAIRMAN HANDS: Thank you, Dennis.

21 MR. LANZAFAMA: Mr. Chairman, I have
22 a few questions -- or clarifications, if you
23 don't mind.

24 CHAIRMAN HANDS: Yes, please.

25 MR. LANZAFAMA: Mr. Kaufman, please

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1 bring back up the Division -- or, excuse me,
2 the Stone House Road view we just had up.

3 MR. SIMON: That's 3A?

4 MR. LANZAFAMA: I believe, yes, 3A.

5 THE WITNESS: Yes.

6 MR. LANZAFAMA: So the images that
7 you have depicted in the lower right-hand
8 corner, your proposed rendering and location
9 of the buildings, you're telling me that
10 we're -- with the stepping of the buildings,
11 we're going to be able to eliminate all 22
12 feet of fill that the applicant was proposing?

13 THE WITNESS: Not necessarily. I
14 think in the -- if I might just go to the
15 original alternate elevation. Along Stone
16 House Road, we had just made estimated --

17 MR. SIMON: I'm sorry.

18 Mr. Kaufman --

19 THE WITNESS: I'm sorry. This is
20 Exhibit 1A, the second figure on the bottom of
21 Exhibit 1A is the Stone House Road elevation
22 where I propose, at least -- again, this is
23 just a suggestion. We had anticipated about 4
24 feet of drop with each split. And given that,
25 you know, at least -- just the three buildings

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1 there, obviously that gives you 12 feet of
2 drop and then some distance between the next
3 two buildings, would still probably provide
4 some minor retaining wall at the bottom just
5 for defensible purposes on the site and
6 probably just to keep it from just -- the toe
7 of the slope from sloping off.

8 It was not depicted in the
9 rendering, per se. Again, the rendering is a
10 little bit of artistic license just to kind of
11 show scale. I can pull that back up again for
12 you --

13 MR. LANZAFAMA: Go to your site
14 plan, 5A.

15 THE WITNESS: Sure.

16 MR. LANZAFAMA: Okay. Now, you
17 notice that on the opposite side of the
18 buildings from which you showed in both
19 exhibits, there's driveways and garages.

20 How do you propose to transition 4
21 feet between these garages?

22 THE WITNESS: Yes. Between each
23 building -- it's relatively easy. The road
24 itself will be sloping at a natural slope,
25 probably not nearly as steep right now as

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1 currently Stone House Road is. And then a
2 retaining wall between -- right at the
3 designing wall would be required to extend out
4 to split these two parking lots to be level or
5 near level. They'd still have some slope,
6 but --

7 MR. LANZAFAMA: From an engineering
8 point of view, that would be extremely
9 difficult and would run into some serious
10 problems with the entries to the buildings. I
11 don't want you to mislead the Board and make
12 them think that this is the solution to some
13 of the issues that have cropped up with regard
14 to this application.

15 I agree, you could probably step the
16 buildings. I don't know if you can step them
17 in the location that you are proposing. If
18 you look at their typical building, they have
19 six garages, grouped in pairs of two.

20 Is it possible to step the building
21 between the entrances to each of the units?
22 For example, take -- if you look at the
23 original site plan, which is in the Prism
24 submission, you take any one of the buildings.
25 Take Building 7, which fronts on Stone House.

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1 You have a dual garage, side by side. Then
2 you have a lawn panel and a sidewalk to the
3 front entry.

4 At that location, you might be able
5 to introduce a step.

6 Then you have another double garage,
7 then you have another lawn panel, which you
8 might be able to introduce another step.

9 But to step them 4 feet I think
10 would be problematic for the building and for
11 the site because then the driveway grades are
12 not going to work and you're not going to be
13 able to get ADA accessibility to the units on
14 the first floor.

15 Remember, every unit has to be ADA
16 accessible when they're rentals. And I don't
17 think the stepping of the buildings -- I think
18 you're going to create some problems with
19 regard to that.

20 I don't disagree. You can introduce
21 some step, maybe a foot, at each of those
22 breaks. So maybe a 2-foot step might work,
23 but not a 4-foot step. I think that would be
24 too extreme and would create a number of site
25 issues that might be unsurmountable --

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1 insurmountable with regard to ADA
2 accessibility to every unit.

3 And you're going to be able to step
4 down -- I like your idea of the way you've
5 reoriented the buildings and created the large
6 open space in the center of the site. I think
7 that works well. But look at the way -- the
8 only way that you're taking advantage of the
9 site's topography are the perpendicular units
10 to Stone House Road, stepping down from the
11 railroad area down towards the southwest
12 corner, and then coming down along Stone
13 House, you may be accomplishing some.

14 But I still think the unit --
15 Building Number 6 and 7 is still going to be
16 probably 8 to 10 feet above the road. I just
17 want the Board to understand that; that you're
18 not going to be at grade by the time you get
19 to that corner. I just don't think it's
20 possible.

21 THE WITNESS: Yeah, and let me say I
22 don't disagree with the majority of what
23 you're saying. I do disagree, respectfully,
24 with that's not an appropriate place to put
25 the building because there are no residential

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1 man doors in those locations. Four feet might
2 be a little high, might be a little tough. It
3 could be 2 feet, could be 3 feet. It could
4 vary. This is just suggested.

5 I think there has to be a little bit
6 closer look at the site plan. I don't
7 disagree that you might have some small
8 buildup at the lower corner of that site just
9 for practical purposes because it does dip
10 off, but 22 feet I think we can all agree is
11 highly inappropriate and not in keeping with
12 the natural features of the site and that's
13 what we're trying to avoid.

14 And I think it's very common
15 practice to step buildings, particularly large
16 developments, across the site, not build them
17 up to be flat. This is not a flat site. This
18 is more of a rural, urban site with natural
19 topography that always slopes down towards the
20 river. And working with that topography
21 rather than trying to force it is a better
22 both engineering, planning, and architectural
23 solution.

24 MR. LANZAFAMA: I don't disagree. I
25 just don't want the Board to be misled that

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1 all of that fill and those retaining walls can
2 be eliminated by your concept of stepping the
3 buildings. It's going to cause some other
4 issues.

5 I do agree you're going to reduce
6 the amount of fill and you can put some
7 stepping in the buildings, and I don't
8 disagree with some of your ideas with regard
9 to the facades and the orientations of the
10 buildings. I love the mixed-use building on
11 the corner. It's just, unfortunately, this is
12 not what the applicant has brought to us.

13 THE WITNESS: Well stated.

14 CHAIRMAN HANDS: While we're on the
15 professionals. Liz, did you have any comments
16 as well that are of interest?

17 MS. LEHENY: A couple of comments
18 and then I just have a couple of questions.

19 One, I also echo Mr. Lanzafama's
20 comments on the facades. I think these are
21 actually great improvements to what has been
22 previously presented.

23 My one question for you, just so I
24 understand your site plan, is where have you
25 reduced the heights to two and a half stories?

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1 THE WITNESS: So on the screen now,
2 you see building -- Exhibit 1B, proposal --

3 MS. LEHENY: Yes.

4 THE WITNESS: Okay. On the eastern
5 side, the buildings along Division Avenue,
6 which currently in the current applications
7 are Buildings Number 10 and 12 --

8 MS. LEHENY: Okay.

9 THE WITNESS: -- have been replaced,
10 where my cursor is pointing, on the easterly
11 side of the development. That's a
12 two-and-a-half story building, in that
13 location, rotated parallel to Division Avenue.

14 MS. LEHENY: So, sorry. Just so I
15 understand, that is what is in the current
16 site plan, two buildings. You've combined
17 them or --

18 THE WITNESS: Well, not combined the
19 building. Simply just -- we eliminated one or
20 moved one. We moved that building north on
21 the site. We just relocated it. That
22 particular area, we have one building
23 instead -- in lieu of two there. And then on
24 the northern part of the site, there is not a
25 building in the current application's proposal

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1 along Commerce Street and that building also
2 is now a two-and-a-half story building as
3 well, as required by the ordinance.

4 MS. LEHENY: Okay. And then -- I'm
5 going to let that go because I don't agree,
6 but the building that's -- obviously I can't
7 point, but --

8 THE WITNESS: Which one?

9 MS. LEHENY: I think there's a
10 building that's off the site plan maybe. It
11 would be just closest to the northern property
12 line.

13 THE WITNESS: The building to the
14 west of the mixed-use building?

15 MS. LEHENY: Yeah. There's the
16 building to the west. Isn't there yet another
17 building to the west of that?

18 THE WITNESS: That's Building Number
19 1 in the applicant's proposal.

20 MS. LEHENY: And is that two and a
21 half stories in your proposal or no?

22 THE WITNESS: It currently is not.
23 It is still remaining the three-story
24 building, buildingwise. But it's not my -- I
25 want to be very clear. This is not my

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1 proposal. As Mr. Fourniadis will, I'm sure,
2 and his attorney will tell you, I'm not the
3 applicant. These are just suggested
4 alternatives to show that it could be
5 conforming.

6 There is the question of Building
7 Number 1, whether that still is facing the
8 north property line. There are several north
9 property lines. We had a lot of discussion on
10 this. Should the Board deem that Building
11 Number 1 requires a height variance because it
12 needs to be two and a half stories, not three,
13 there's plenty of room in 10,000 square feet
14 of footprint to get six units that would
15 potentially be displaced. I don't think you
16 would lose all six, but I'm not the
17 applicant's architect. But plenty of room in
18 10,000 feet to make up that lost space and not
19 have loss of density.

20 MS. LEHENY: Okay. Because that was
21 my next question, actually, was how many
22 units, you know, ballpark, you thought would
23 have to be relocated to that nonresidential
24 building.

25 THE WITNESS: Yes. Four or six in

1 this particular scheme depending on -- and,
2 again, I'm assuming -- and for purposes of
3 simplicity's sake, I assumed that we wouldn't
4 occupy the half story, which is permissible by
5 code because it could be dormered. When I say
6 "this," the top floors of the buildings that
7 the applicant had proposed could be occupied
8 as a half story, just not a full story, and
9 still comply with the ordinance.

10 And so if they chose to put some
11 units up there or stretch them up into those
12 spaces, less would have to be displaced -- or
13 not displaced, just moved to a different
14 location such as the mixed-use building.

15 MS. LEHENY: Okay. Sorry. Just to
16 be clear, it's four per building that would be
17 stepped down or is it four to six total?

18 THE WITNESS: The easiest way for me
19 to describe this is there are two per building
20 because of the lower floor units. Again, that
21 would be up to the applicant. If it were me,
22 I probably would move those units just because
23 there's only two and each -- on the ground
24 floors and they could easily be moved to the
25 second floor of the mixed-use building.

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1 MS. LEHENY: Okay. Those are my
2 only questions right now.

3 CHAIRMAN HANDS: Okay. Any Board
4 members, comments?

5 Frank, is it appropriate to hand it
6 over to yourselves for comments at this point?

7 MR. REGAN: We have no comments at
8 this time.

9 CHAIRMAN HANDS: Okay. Mr. Simon,
10 then, can I hand it --

11 MR. SIMON: Sure. I don't know,
12 Mr. Chairman, if you want to open it up to any
13 member of the public to ask a question. I
14 would think that that would probably be next.
15 And then we would go to Mr. Pessolano.

16 CHAIRMAN HANDS: That's fair.
17 That's fair. How about we do that. Thank
18 you.

19 BOARD MEMBER PFEIL: Mr. Chairman, a
20 suggestion. It's five after nine. Good time
21 for a ten-minute break.

22 CHAIRMAN HANDS: If everybody's
23 agreeable, then that sounds fine. 9:15? I
24 don't have my clock in front of me.

25 COORDINATOR COONCE: Yes. It's

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1 9:08.

2 CHAIRMAN HANDS: Thank you, Deb.

3 How about 9:15 then?

4 BOARD MEMBER PFEIL: Good.

5 CHAIRMAN HANDS: Thank you, all.

6 (Whereupon, a recess is taken.)

7 COORDINATOR COONCE: Mr. Chairman,

8 we'll --

9 CHAIRMAN HANDS: We'll go to public
10 comment?

11 COORDINATOR COONCE: Yes.

12 CHAIRMAN HANDS: I see one.

13 COORDINATOR COONCE: Yes. Don

14 Farnell.

15 MR. FARNELL: I don't care to make a
16 comment at this point. I'm sorry.

17 COORDINATOR COONCE: Oh, okay. All
18 right. He lowered his hand. Okay. Again,
19 this is time for questions from the public
20 with regard to the testimony from Mr. Bill
21 Kaufman and his professionals.

22 I do not see any questions,
23 Mr. Chairman.

24 CHAIRMAN HANDS: Thank you.

25 Mr. Simon, back to you now.

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1 MR. SIMON: Yes. So I think at this
2 point, then, I'm going to call Mr. Pessolano,
3 our professional planner expert.

4 MR. PESSOLANO: Good evening.

5 CHAIRMAN HANDS: Good evening.

6 MR. SIMON: So, Mr. Chairman, if
7 Mr. Pessolano can be sworn, please.

8 CHAIRMAN HANDS: Yeah.

9 M I C H A E L J.

10 P E S S O L A N O, having been duly sworn, was
11 examined and testified as follows:

12 MS. MAZIARZ: Please state your name
13 for the record and spell your last name.

14 THE WITNESS: I am Michael J.
15 Pessolano. That's spelled P-E-S-S-O-L-A-N-O.
16 Licensed professional planner in the State of
17 New Jersey.

18 MS. MAZIARZ: Thank you.

19 THE WITNESS: You're welcome.

20 MR. SIMON: Thank you.

21 DIRECT-EXAMINATION

22 BY MR. SIMON:

23 Q. Mr. Pessolano, if you could please
24 provide your background and credentials, including
25 your profession -- your professional

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1 qualifications, occupation, affiliation, and areas
2 of expertise.

3 A. Gladly. It's nice to join in with this
4 interesting application. I have served as a
5 licensed professional planner for close to 40
6 years, originally starting in planning in 1979, so
7 I guess I have hit the 40-year mark. Originally
8 licensed in 1984 as a licensed professional
9 planner.

10 Roughly half of my career over that time
11 has been as an in-house municipal planner and the
12 other half serving as a consulting planner. In
13 the latter part of my career now, I find myself
14 almost nightly visiting with boards like yours to
15 discuss development applications and very common
16 perspectives.

17 I have a master in urban planning degree
18 from the City University of New York, Hunter
19 College, and I have served roughly half a dozen
20 northern New Jersey municipalities as their Board
21 planner. Also served as the City planner for
22 Hackensack and Township planner for Livingston.

23 And my license remains in good standing.
24 I'm a member of the American Institute of
25 Certified Planners and that status is also in good

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1 standing.

2 My core competency -- one of my core
3 competencies in my profession is review and
4 critique of development applications.

5 So with all that experience with those
6 boards, I've had plenty of opportunity to do a lot
7 of that type of work. That prepares me very
8 particularly for the task at hand, which is to
9 evaluate this application from a planning
10 perspective.

11 Q. And, Mr. Pessolano, you've testified, of
12 course, before countless zoning and planning
13 boards throughout the State of New Jersey,
14 correct?

15 A. Many hundreds of times.

16 Q. And you were qualified on those
17 occasions as a professional planning witness,
18 correct?

19 A. That is correct.

20 MR. SIMON: We request that
21 Mr. Pessolano be qualified as an expert
22 witness, as a licensed professional planner.

23 CHAIRMAN HANDS: Yes. Thank you
24 very much for that.

25 MR. SIMON: Thank you, Mr. Chairman.

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1 BY MR. SIMON:

2 Q. Mr. Pessolano, are you familiar with the
3 project and the property and the surrounding
4 neighborhood?

5 A. Yes. I evaluated those quite closely,
6 taking pains to understand the site and the
7 setting by physically inspecting it, as well as
8 the surrounding neighborhood. Looked at the
9 development plans and the relative aspects of the
10 municipal regulations that apply to this project.

11 Q. When you say "the municipal
12 regulations," you're talking about the ordinance
13 and the master plan?

14 A. Yes.

15 Q. And have you also had an occasion to
16 review the professional reports that were
17 submitted by the Board professionals in connection
18 with this application?

19 A. I did.

20 Q. And are you prepared this evening to
21 provide your opinions as a professional planner
22 with regard to the application that has been
23 presented to date by the applicant?

24 A. I am.

25 Q. Okay. Please proceed.

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1 A. Thank you.

2 I want to lead off by expressing
3 that this evaluation is interesting because it
4 relates to things that are what they are, I
5 will say, not that anyone has purposefully
6 proposed them. But I think that my review of
7 the ordinance provisions has revealed some
8 things that may not have been on the table
9 previously. So here goes.

10 The higher tiers of relief are, of
11 course, in the use realm -- the higher tiers of
12 zoning, I should say, are squarely in the realm of
13 permitted uses. So in my evaluation, I noticed
14 several things that I believe require this
15 application to obtain "D" relief, in other words
16 use relief, from the Zoning Board of Adjustment.

17 And the first one is concerning a
18 provision that limits -- a provision in the
19 ordinance that limits the number of principal
20 permitted uses per lot to one. We have not only
21 14 individual principal buildings representing a
22 residential component of this project, there's
23 also a principal commercial structure and a
24 swimming pool and a clubhouse. All of those
25 representing distinct principal uses.

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1 And I make that conclusion because
2 the ordinance language does not even mention
3 accessory uses. And I'm speaking of land use
4 Section 122.15.3 dealing with the MU-0 overlay
5 district regulations.

6 Again, maybe that was just an oversight
7 or whatever, but it is what it is. I'm here to be
8 the umpire, so to speak, to call them like I see
9 them, not to criticize what they are any further.

10 But I believe that relief is needing to
11 be obtained. I could not see anything in the
12 ordinance language concerning permitted uses other
13 than a description of the types of uses that would
14 be permitted just as in any zoning district where
15 you have a list of permitted use -- excuse me,
16 permitted uses.

17 Q. So, Mr. Pessolano, I'm sorry to
18 interrupt, but just for clarification purposes,
19 are you referring to Section 103.5 of the
20 ordinance where it talks about the fact that --

21 A. Yes.

22 Q. -- no more than one principal building
23 shall be permitted on any one lot in the township?

24 A. That is correct.

25 Q. Okay.

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1 A. I meant to mention that ordinance
2 section.

3 Q. Yeah.

4 And then it has certain exceptions
5 for certain zones, is that accurate?

6 A. Yes.

7 Q. Okay. And is the MU-0 zone one of those
8 exceptions?

9 A. It is not listed in the exceptions from
10 that provision.

11 Q. And does that imply or does it actually
12 state, then, that the application is being -- as
13 currently submitted anyway -- is technically
14 violative of that section of the ordinance?

15 A. That is my conclusion.

16 Q. And with regard to, just so we're clear,
17 before you move on, that the Municipal Land Use
18 Law -- and you keep talking about "D" variances.
19 You're talking about the provisions in the
20 Municipal Land Use Law related to Section
21 40:55D-70(d) of the Municipal Land Use Law,
22 correct?

23 A. That's correct.

24 Q. Okay. And D-1 prohibits -- or requires
25 a D-1 variance for a use that's not permitted, as

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1 well as a principal structure or building that's
2 not permitted, correct?

3 A. That is correct.

4 Q. Okay. And so does that form the basis,
5 at least so far with regard to your testimony, of
6 the need for the applicant, based on how it
7 decided to design the project, to seek relief
8 under Section 103.5 of the ordinance?

9 A. That is correct, Mr. Simon.

10 Q. Okay. Please proceed. Thank you.

11 A. Thank you.

12 Another D-1 variance for a use not
13 permitted pertains specifically to the swimming
14 pool and the clubhouse uses. Again, the language
15 of the ordinance section creating the MU-0
16 district does not mention accessory uses at all.
17 And I saw nowhere else in the ordinance that would
18 automatically authorize these structures to
19 appear. There is a section of the ordinance that
20 speaks to swimming pools being permitted as
21 accessory uses in certain zones. And, again, the
22 MU-0 district was not listed as one of those zones
23 where swimming pools as accessory uses are
24 permitted so --

25 Q. Is that -- Mr. Pessolano, that's Section

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1 124.5 of the ordinance?

2 A. That's correct.

3 Q. Okay. Please proceed.

4 A. So that's all I need to say about that
5 element. Again, it is what it is.

6 Q. And because swimming pools are only
7 permitted accessory uses in certain zones, but not
8 in the MU-0 zone, then a form of variance relief
9 is required, is that correct?

10 A. That is correct.

11 Q. And that's because under Section D-1 of
12 the Municipal Land Use Law states that that form
13 of use variance is required for not just the
14 principal use, but also an accessory use that is
15 not permitted in a particular zone to seek that
16 relief? That is what necessitates the D-1 relief
17 that's required for purposes of the swimming pool.

18 A. Yes. For any use that's not permitted,
19 it's considered prohibitive. So it has to be
20 specifically permitted in the ordinance language.

21 Q. And would that apply to the clubhouse as
22 well?

23 A. Yes.

24 Q. All right. Please proceed.

25 A. Thank you.

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1 There is something that I will come back
2 to, but while I'm on the D-1 relief, for the sake
3 of organization, I'm also going to speak to D-1
4 relief for occupancy of a third story where the
5 height limit is limited to two and a half stories.
6 And I need to enter the second part of that for
7 all this just to make sense, but I just wanted to
8 let everyone know that there is also that third
9 element of D-1 relief in this application.

10 I believe that a D-4 variance is also
11 needed concerning floor area ratio requirement
12 that is presented in land use Section 132.6. It
13 provides -- its title is "Floor Area Ratio in
14 Residential Zones." The MU-0 district is labeled
15 specifically in the ordinance definitions as one
16 of the zones that is considered a residential
17 zone. It's under the definition "Zone,
18 Residential." It lists a number of zones
19 including the MU-0 district. So there is no
20 disputing, in my mind, that the MU-0 zone is a
21 residential zone and that this section relates to
22 all residential zones where floor area ratio is
23 measured and limited.

24 So the table in Section 132.6 provides
25 for a graduated way of providing for total square

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1 footage of floor area based on the size of the
2 lot. And this subject property at nearly 12 acres
3 is in the highest category of allowance for square
4 footage of floor area being in the 150,000 square
5 feet and over category.

6 In the situation where you have more
7 than 150,000 square feet of lot area, there's also
8 an additional allowance of 3 percent of the amount
9 of lot area that's over 150,000 square feet. And
10 doing the math, that amounts to 10,919.4 square
11 feet for a lot overage over 150,000 -- bear with
12 me just a second -- amounting to -- hold on one
13 second, please.

14 The amount -- the total lot area in
15 square feet for the subject application is 513,980
16 square feet. Subtracting 150,000 square foot from
17 that to participate in the formula in the
18 ordinance for FAR leaves in excess of 363,980
19 square feet above the 150,000 upper range.

20 Three percent of that 363,980 square
21 feet comes to 10,919.4 square feet per my math.
22 Add that to the allowance in the table for 150,000
23 square feet and up parcels of 10,000 square feet,
24 that's how I came up with the total floor area
25 allowance of 20,919.4 square feet.

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1 The site plan that's submitted relies on
2 an FAR limit of .5. That is expressed in the
3 development regulation section of the ordinance
4 language, 122.15.3. And that, again, calls for a
5 limit of .5 and the applicant has submitted a plan
6 that proposes a .4 FAR, floor area ratio, for a
7 total of 203,962 square feet.

8 Q. So the bottom line here is that the
9 applicant, because of the fact that the MU-0 zone,
10 when it was created, was actually identified as a
11 residential zone, with residential uses at the
12 time, and as a result of that, there's a
13 discrepancy with regard to the ordinance and that,
14 in fact -- that based on Section 132.6 regarding
15 floor area ratios in residential zones, that the
16 applicant may require, in fact, a floor area ratio
17 variance under 40:55D-70(d)(4) of the Municipal
18 Land Use Law?

19 A. That is correct.

20 Q. All right. Please proceed.

21 A. Thank you.

22 So now we come to that provision that
23 was tied to the other D-1 variance that I touched
24 upon for the third floor occupancy. And this is
25 another form of "D" relief required pursuant to

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1 the statute under the D-6 provision, which is for
2 a height in excess of 10 feet or 10 percent
3 greater than the maximum height limit for the
4 district.

5 And I believe that five buildings in the
6 site plan are needing to be two and a half
7 stories, 35 feet, whereas now they are proposed as
8 three stories and 45 feet. All 14 of the proposed
9 buildings are the same height, three stories and
10 45 feet.

11 The specific buildings that are
12 triggering this variance are Buildings 1 and 14,
13 which face the New Jersey Transit railroad tracks,
14 and Buildings 12, 10 and 8, which face Division
15 Avenue. The height limit for those buildings, I
16 believe, needs to be lowered to two and a half
17 stories and 35 feet.

18 But because I believe that that is the
19 case, the application also proposes a third floor
20 occupancy where only two and a half stories of
21 occupancy, use occupancy, are permitted. And so
22 because of that conflict, there's another D-1
23 variance for that use on the third floor.

24 Q. Well, when you talk about the use of the
25 third floor, is it a D-1 or are you considering

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1 that as a D -- as a D-6?

2 A. I'm considering it as a D-1 use on the
3 heels of an actual application I testified on in
4 Millington, actually for my client's building.
5 Mr. Kaufman had a project and one of the issues
6 was, as expressed by the Board's former planner,
7 Mr. O'Brien, that use relief was needed to have a
8 third floor of use where only two and a half
9 floors of use are permitted.

10 And on the basis of that experience and
11 for the sake of consistency with the way the
12 zoning ordinance was interpreted at that time, I
13 find it a similar situation.

14 Q. All right. Is there also another form
15 of a "D" variance relief required, namely D-6?

16 A. The D-6 relief is now for the setback --
17 I'm sorry, for the height of buildings facing
18 Division street and the New Jersey railroad
19 tracks. As I said, there are --

20 Q. When you say -- Mr. Pessolano, let me
21 interrupt you for a second. You say the railroad
22 tracks. Does Commerce Street factor into that as
23 well?

24 A. Not -- in my view, the railroad tracks
25 are the destination for the measurement and the

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1 nearest building is the starting point for that
2 measurement. Commerce Street does not represent
3 any structure that would interfere with that
4 line-of-sight, if you will, between those
5 reference points that are specifically mentioned
6 in the language of the ordinance limits for height
7 in the MU-O zone. Specifically mentions New
8 Jersey Transit railroad tracks and it specifically
9 mentions Division Avenue as the two places from
10 which only two-and-a-half-story, 35-foot tall
11 buildings should be seen as the first view from
12 those vantage points.

13 Q. Thank you for that clarification.
14 Please proceed.

15 A. You're welcome.

16 Other buildings within the interior of
17 the property are permitted to be three stories and
18 45 feet. I certainly have no dispute with that.
19 And, as well, on Stone House Road, it specifically
20 mentions that three-story height within 45 feet,
21 also a permitted height along that road.

22 So the only buildings that do not
23 comply, in my view, are those five that I
24 mentioned. I can repeat them again if anybody
25 wishes.

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1 Q. So with regard to the five buildings
2 that don't comply, when you say they don't comply,
3 they don't comply with the MU-0 ordinance?

4 A. Yes.

5 Q. And they don't comply with the MU-0
6 ordinance as to height?

7 A. That is correct. And so because --
8 where the height limit is 35 feet, 10 percent of
9 that is 3 and 1/2 feet. The proposed buildings
10 are more than twice that at 45 feet, so it's
11 clearly greater than 10 percent differential when
12 measured that way. The half a story more, also
13 another measure of 10 percent -- of greater than
14 10 percent if you look at it that way.

15 Q. Okay. So with regard to the deficient
16 areas that you've just identified, do those
17 variations from the ordinance trigger a D-6
18 variance? Or, in other words, a violation of
19 40:55D -- I'm sorry, violation of the ordinance
20 requiring relief from NJS 40:55D-70(d)(6)?

21 A. That is correct.

22 Q. And, Mr. Pessolano, are there any other
23 what we call "D" variances beyond those that
24 you've identified to the Board this evening?

25 A. I will say that I believe a D-6 height

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1 variance may also be implicated on the Stone House
2 Road fronting buildings. I don't have enough
3 information to pinpoint the deviation and where it
4 starts or ends. But as I look at it as a planner
5 and a person who understands the purpose of height
6 regulations, there's something amiss with the
7 extreme differential from the grade level in front
8 of those buildings to the top, exaggerating by far
9 the permitted 45 height limit to as much as
10 perhaps 70 feet.

11 As I take a quick look at the road
12 elevation of Stone House Road by Building 6, in
13 particular that's where the greatest amount of
14 fill that Mr. Kaufman was referring to in his
15 testimony, would have on top of it a 45-foot-tall
16 building. That is a massive change in the
17 viewshed there and inconsistent with purposes of
18 height regulation.

19 I think it needs to be looked at
20 carefully by the design team on the
21 applicant's side to make that a better fit.
22 But I am not able to say which exactly --
23 which type of relief, whether it's a D-6
24 variance or a bulk variance pursuant to
25 Section C of that same statute for this

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1 particular location.

2 Q. And with regard to the application that
3 was presented, this applicant, to your knowledge,
4 has not made an application for any form of
5 variance relief to your knowledge, is that
6 accurate?

7 A. That's accurate.

8 Q. And you have reviewed the testimony of
9 Mr. Kaufman in connection -- and I'm going to just
10 stop it right there -- in connection with what
11 you've testified to so far regarding the necessity
12 for various forms of "D" variance relief, correct?

13 A. I've discussed it with him in person as
14 well.

15 Q. And any of the testimony that he -- do
16 you -- let me back up and state it a different
17 way.

18 Do you concur with his analysis, as an
19 architect of course, you know, in terms of how he
20 got to the determination that various forms of D-6
21 variance relief is required?

22 A. I concur with his analysis on that
23 topic.

24 Q. And with regard to the "D" variances or
25 variances pursuant to N.J.S. 40:55D-70(d), that

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1 those type of variances require relief pursuant to
2 the Municipal Land Use Law by the municipality's
3 Board of Adjustment, correct?

4 A. That is correct. The Planning Board is
5 constrained from considering "D" relief
6 altogether.

7 Q. All right. So if there's no other "D"
8 variances that you've identified, why don't you
9 move on to any other analysis you've made as a
10 professional planner with regard to this
11 application?

12 A. Yes. I find that there's bulk relief
13 required pursuant to Section 135.1 of the land use
14 ordinance and that pertains to uniformity in
15 design. All of the items under -- with 130 in
16 front of it are variance items when they're not
17 complied with according to the language of the
18 statute -- I'm sorry, to the language of the
19 ordinance. I think another section --

20 Q. Mike, just stop right there. Let me
21 interrupt you just so the record is clear. So
22 that in your experience over 40 years, you've
23 reviewed countless ordinances that are divided
24 between zoning regulations and what we'll call
25 site plan or design standards, correct?

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1 A. Correct.

2 Q. Okay. And each municipality determines
3 on its own where the dividing line is; in other
4 words, which provisions fall under the zoning
5 ordinance and which provisions fall under what
6 we'll call the site plan or design standards,
7 correct?

8 A. Yes. And the Long Hill ordinance goes
9 one step further by specifying under Section 103.3
10 variances, and I'll read it, "Any deviation from
11 any provision of Sections 120, 130, 142, 151, and
12 155 of the township land use ordinance shall
13 require a variance pursuant to N.J.S.A.
14 40:55D-70(c) or (d)," N.J.S.A.

15 Q. Okay. So you believe that that
16 includes --

17 A. And 60A, excuse me. That's the Planning
18 Board's power to grant "C" relief, 60A.

19 Q. Right. So you believe that Section 135
20 of the land use ordinance falls within that
21 necessitating variance relief?

22 A. Yes.

23 Q. And what about Section 135, and that
24 includes 135.1 and 135.2 in terms of uniformity
25 and architectural design or appearance, do you

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1 find that the application or applicant varies
2 from?

3 A. I find the application conflicts with
4 this provision in a big way, that 14 identical
5 dwelling structures are proposed on the landscape
6 where the ordinance clearly does not invite that
7 result.

8 And I looked further at the goals of
9 zoning in the township and was further convinced
10 that it must be so because the vision for
11 regulating development in the township seeks to
12 avoid suburban tract development. Uses those
13 exact words, "suburban tract development," as
14 something the township does not want to become
15 known for.

16 So for that to be true and to be a
17 guiding principal of the development regulations
18 that flow from it, it's consistent with my finding
19 that these 14 identical buildings fly in the face
20 of that planning principle and would require a "C"
21 variance to be allowed.

22 Q. And with regard to Section 135, you've
23 also reviewed the testimony of Mr. Kaufman as a
24 licensed architect with regard to the subject
25 matter, correct?

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1 A. Yes.

2 Q. And as a professional planner, do you
3 concur with the findings and conclusions that he
4 made?

5 A. I do. And I think it is disingenuous to
6 say that this is not the intent of the ordinance.
7 I don't mean that in a negative sense to any
8 individual who might feel that way, but I think
9 it's very, very clear that repetitive building
10 styles are undesirable and detrimental to the
11 character of Long Hill Township.

12 Q. And so with that, let's maybe turn to
13 Section 152, which I referred to during my earlier
14 remarks, building design, and the guidelines that
15 are incorporated in the land use ordinance
16 regarding building design, whether it's the
17 general guidelines, whether it's the building
18 massing, scale, facade treatments, and the like;
19 building materials, color, texture, that
20 Mr. Kaufman related to or commented on, you know,
21 during his testimony.

22 Do you have a professional planning
23 opinion regarding those standards?

24 A. I do. I concur that this design
25 guidance is not fully met because the prime

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1 example is something we've heard quite a bit about
2 tonight, which is that staggering change in
3 elevation at the southwest corner of the site
4 where Building 6 would be perched very, very high
5 above the roadway, which is no more than 40 feet
6 away from Stone House Road. And I submit to the
7 Board that I can't imagine that would be the
8 intent of any of the governing body's legislation
9 to come out that way.

10 So to get that height requires not
11 adhering to the natural features of the land as
12 required by Section 152.1.b. So there's that
13 aspect of it.

14 Secondly, 152.1.b urges that new
15 buildings should strengthen the particular design
16 features of its locale and complement existing
17 building designs in all of the villages, including
18 Millington Village.

19 As I see it, there really doesn't appear
20 to be an attempt to use complementary materials or
21 designs to track with local buildings and their
22 materials here. In my site visit, it was clear
23 that nearly all of the buildings along Division
24 Avenue and in Millington Village were masonry
25 exterior, brick and stucco largely, with earth

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1 tones. Certainly sharply contrasting with the
2 proposed clapboarding of three-story full
3 structures, as Mr. Kaufman capably pointed out.
4 That's really the basis for concluding that
5 there's a mismatch.

6 So I think that could be made much
7 more compatible and would be a win, actually,
8 for the development itself because it's
9 proposed within a very elegant fabric right
10 now. It is in continuous transition to
11 something better and I think that a very large
12 development such as this that would pretty
13 much double the size of the village really
14 should set the pace for how properties are
15 finished and how they look for the long term.
16 And I think this section really hits the nail
17 on the head by encouraging that exact kind of
18 analysis and treatment for new structures.

19 Q. So in terms of building design, what
20 kind of -- if the applicant was to have applied
21 for relief from that section or sections of the
22 ordinance, how would the applicant go about that?
23 In other words, what kind of relief would the
24 applicant require for particularly those building
25 design sections?

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1 A. That I see as a design waiver --

2 Q. And you heard --

3 A. -- under Section 51 of the Land Use Law.

4 Q. Right. So that would be under 51B --

5 A. Uh-huh.

6 Q. -- in terms of impracticality of
7 compliance, correct?

8 A. Yes.

9 Q. And you believe -- or do you have an
10 opinion whether the applicant, even if it had
11 applied, given Mr. Kaufman's exhibits, including
12 those he presented this evening, whether the
13 applicant would even be able to meet the proofs of
14 impracticality given what was presented by
15 Mr. Kaufman?

16 A. I think a decision by the Board on that
17 would be ripe after there was an attempt to do
18 better with matching these elements of design that
19 are very important. I take them to be very
20 important to the township based on how they're
21 expressed and articulated in the ordinance, and
22 also all of the stuff that goes into the
23 township's planning house that I looked at further
24 convinced me that design matters and it's not just
25 a token thing. It should be given serious

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1 consideration.

2 And I think the fit of a project
3 that follows the contours of the existing site
4 better and matches with the architectural
5 treatments of the surrounding buildings better
6 is more worthy of any remaining design relief
7 waiver than at the present.

8 Q. Is there additional relief that the
9 applicant -- you believe that the applicant is
10 required to seek that it has not to date?

11 A. It -- well, good question. The only
12 remaining relief I was going to speak to were
13 things that were recognized by the designer in a
14 table of the front page on Sheet 1 of the site
15 plan, dealing with excessive lighting, 1.9
16 footcandles where .2 footcandles is the maximum
17 nighttime level.

18 And the shortage of trees to be
19 planted, 119 trees plus 29 trees in the
20 parking lot for a total of 148 trees. A total
21 of 96 trees are proposed. I believe that
22 there's a way to better that, if not eliminate
23 it, because of the things that Mr. Kaufman
24 presented in his design scenarios. There is
25 room to, I think, do better on the tree count

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1 on site.

2 And so while we're on the topic of
3 Mr. Kaufman's concepts, I think that the Board
4 should seriously consider those design tweaks. I
5 think the applicant should seriously consider the
6 design tweaks. I think it will result in a more
7 compatible project and very likely eliminate some
8 of the variance relief that I have enumerated.

9 But, also, this is a rare opportunity to
10 do something that very few locations can do, which
11 is to build upon a very valuable transit station
12 right in the heart of the village and make a true
13 transit-oriented development come to life. And
14 I'm speaking now to an enhanced commercial
15 building that is indeed truly mixed use. In its
16 current configuration, it's simply a commercial
17 building at the edge of a residential enclave.
18 But a mixed-use building hugging the corner of
19 Division Avenue and Commerce Street, right at the
20 rail line, tracks so nicely with what's already
21 there on the other three perspectives of that
22 area.

23 I think that it behooves the Board to
24 strive for -- and the applicant as well -- the
25 most attractive designs for this large and

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1 impactful project. Because doing so I think
2 ultimately leads to inspiring other property
3 owners to attain a new bar with the improvement
4 that they see on the ground from -- of a project
5 that can be very nice if some of these design
6 principles are embraced.

7 Q. Thank you, Mr. Pessolano.

8 And then one final question. That based
9 on the omissions from -- on the part of the
10 applicant in not applying for the relief that is
11 required of it under the ordinance and the
12 Municipal Land Use Law, not to mention applying to
13 the wrong Board based on the provisions of the
14 ordinance, do you have an opinion as to whether
15 this Board is even in a position to consider a
16 favorable vote on this application?

17 A. Having been the one who calls at many
18 times on what jurisdiction is applicable, in my
19 professional life, I think it's clear that this
20 Board lacks jurisdiction to consider this
21 application because of the "D" relief that's
22 implicated in it.

23 Q. And with regard to the -- putting aside
24 for the moment the jurisdiction and the "D"
25 relief, in terms of the balance of the relief,

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1 that if the applicant had even applied for, that
2 this Board would have the jurisdiction to
3 consider, do you have an opinion as to whether the
4 applicant has presented adequate proofs for that
5 relief at this time?

6 A. I'm not aware of any such proofs.

7 Q. Thank you.

8 MR. SIMON: I have nothing further
9 for Mr. Pessolano at this time.

10 CHAIRMAN HANDS: Thank you very
11 much.

12 Let's go to Liz or Jolanta for any
13 comments on the testimony from the planner on
14 the variances, et cetera.

15 MS. LEHENY: I have a couple of
16 comments. You know, there are a couple of
17 issues that Mr. Pessolano raised that I would
18 like to look at the provisions in the
19 ordinance more carefully before I give the
20 Board any sort of opinion, if you don't mind.
21 If I could beg that from the Board.

22 But, quite honestly, I actually have
23 a question for the Board, which is, you know,
24 Mr. Kaufman has raised these issues and now
25 Mr. Pessolano has raised these issues with

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1 regard to the design and whether -- you know,
2 I provided testimony last time as to what
3 provisions of the ordinance I thought perhaps
4 did apply. I sort of felt it was the design
5 standards probably did more than the
6 uniformity. You know, and obviously the
7 objectors and I disagree on that.

8 But I guess it would be
9 interesting -- it would be helpful, I think,
10 to perhaps the applicant and maybe even the
11 objectors to understand what the Board's
12 thinking is in relation to these issues that
13 have been raised with regard to the design.

14 CHAIRMAN HANDS: Jolanta, before we
15 do that, was there anything you wanted to
16 comment first?

17 MS. MAZIARZ: Okay. I'm unmuted.

18 Just some housekeeping. And for the
19 record, when Mr. Kaufman testified that --
20 there was a back-and-forth between the Board
21 engineer and Mr. Kaufman. I'd like to remind
22 the Board that Mr. Kaufman was not qualified
23 as an engineer. So any testimony that was
24 given that would go toward site planning and
25 engineering, I just want to remind the Board

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1 that Mr. Kaufman was not qualified as an
2 engineer.

3 With regard to this testimony, I
4 would like the opportunity, as well as our
5 Board planner, because, you know, this is just
6 coming up during this hearing. We were not
7 advised earlier that there would be this type
8 of testimony or that there were these types of
9 issues that were going to be raised by the
10 objector and we would like an opportunity to
11 study the ordinances further.

12 CHAIRMAN HANDS: I'll ask the Board
13 for initial comments based upon the architect
14 design, Mr. Kaufman, and the planning comments
15 presented.

16 VICE CHAIRMAN JONES: Yeah,
17 Mr. Chairman. My overall initial impression
18 is I would like to see it look like more of a
19 village, a village look, and that is not what
20 I see when I look at the developer's
21 rendition.

22 I do question a little bit about the
23 two-story buildings and how close they are to
24 Division Avenue, if there's any infraction on
25 any setbacks. I was diligently trying to find

1 that information. I couldn't find it while I
2 was trying to listen to Mr. Pessolano speak.

3 I do have concerns or issues with
4 the uniformity. I remember the last time we
5 spoke, we talked about what exactly is it that
6 we would want considerations for. And that is
7 without changing the footprint of the
8 building, but moving gables, changing the
9 textures of the building so that one building
10 next to another doesn't look like the same
11 building.

12 Changing the ridgeline would be
13 something I'd like to see. Maybe that
14 stepping down does offer that, but I did give
15 this consideration, that -- this task from
16 Mr. Fourniadis from our last meeting, and I
17 thought about this heavily. And that's what
18 I -- those are the -- those are the concerns
19 that I have. I'd like to roll down Division
20 Avenue and see that to my left, as I'm heading
21 towards Long Hill Road, that that blends;
22 there's harmony with that whole area.

23 And that's my -- that's my opinion.
24 And I would also like to have an opportunity
25 to take a look at the "D" variance issues.

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1 MR. LANZAFAMA: Mr. Chairman, I
2 would just like to remind the Board that the
3 underlying zone for this property is the LI-2,
4 which is one of the -- one of the districts,
5 the zoning sections, that were exempted from
6 103.5. So I just want to point that out.
7 That I don't agree with Mr. Pessolano's
8 analysis that multiple buildings are a "D"
9 variance and not permitted on this property.

10 And as to the height, our ordinance
11 simply states that the height of a building is
12 the vertical distance from the lowest ground
13 elevation around the foundation to the level
14 of the highest elevation of the point of the
15 roof surface. There's nothing in our
16 ordinance that says it's measured from the
17 existing topography. If it did, I would agree
18 with Mr. Pessolano, but it doesn't say that,
19 unfortunately.

20 So I think as far as how the height
21 is measured, I think the applicant's engineer
22 did it appropriately. And as far as the
23 number of buildings, I disagree with the --
24 with the objector's planner that multiple
25 buildings are not permitted.

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1 Those are the only two issues I
2 wanted to raise.

3 CHAIRMAN HANDS: Thank you. Those
4 are important -- important comments. I
5 appreciate that.

6 Anybody else from the Board?

7 BOARD MEMBER SANDOW: I'd like to
8 add a technical note. There was a question
9 about front yards, front setbacks, and
10 whatever. I'd just like to remind everybody
11 that the street on the north edge of the
12 property, which is labeled on all the plans as
13 Commerce Street, is not a street. It is not a
14 street. It is not a public right-of-way. It
15 is not a private street.

16 If you look closely at the tax maps,
17 you will find that it simply doesn't exist.
18 By default, Commerce Street is a private
19 driveway across property owned by New Jersey
20 Transit, but as a driveway, it does not
21 qualify as a street. And so all the issues of
22 setback and facing streets and so on do not
23 apply on the north edge of the property.

24 The only purpose for this private
25 driveway owned by the Transit is to provide

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1 access to the municipal parking lot at the
2 train station, but it has never been converted
3 to a street and, therefore, it does not have
4 any of the street restrictions on the design
5 of this lot.

6 Maybe this will be changed in the
7 future, but it certainly is not a street
8 today.

9 CHAIRMAN HANDS: Any other Board
10 comments?

11 MAYOR RAE: I mean, the one comment
12 I have is why, at the tenth meeting, are these
13 issues being brought up of Board jurisdiction?

14 MS. MAZIARZ: Right.

15 MAYOR RAE: And it seems we're kind
16 of flummoxed on it as well. Why? Why are
17 we -- why has this come up in the -- in the
18 tenth meeting?

19 VICE CHAIRMAN JONES: I'm sorry,
20 Mr. Mayor, which are you directly addressing?
21 Are you addressing my comments or --

22 MAYOR RAE: No, I'm saying the Board
23 jurisdiction. The question of whether the
24 Board has jurisdiction over it and nobody
25 seems to know if -- nobody seems to know the

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1 answer.

2 MS. MAZIARZ: Well, the answer is
3 that this application is before the Board.
4 The Board did take jurisdiction over this
5 application. The zone that we're talking
6 about is an overlay. There are -- there are
7 provisions in the underlying zone that discuss
8 accessory uses, at least in my quick look this
9 evening, that say that accessory uses that are
10 customary to the principal permitted use are
11 permitted.

12 You know, we would like the
13 opportunity with Liz to take a look at this so
14 we can advise the Board moving forward. The
15 objectors are allowed to put whatever they
16 want on the record. They're objecting. So
17 they have an expert that is disagreeing with
18 all of the other experts that have appeared so
19 far before this Board.

20 What was understood when this
21 application was submitted, both by the Board
22 experts that were the Board experts at the
23 time, which aren't the same ones, and also the
24 applicant's experts is that this was a
25 conforming application coming before the

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1 Planning Board.

2 The Planning Board took
3 jurisdiction. The Planning Board is well
4 within its right to determine at this point
5 whether or not it has jurisdiction. And the
6 Planning Board up until this time retained
7 jurisdiction, maintains jurisdiction. And I
8 agree with you, Mayor, I don't understand, if
9 this was an issue, why this wasn't brought up
10 before the tenth hearing.

11 MR. SIMON: I --

12 MS. MAZIARZ: This application was
13 submitted a long time ago, long before these
14 hearings ever began. That's the only point.

15 MAYOR RAE: Yeah.

16 MR. SIMON: Just in terms of from my
17 perspective, just two quick comments.
18 Obviously I'm new to this application, so this
19 is my first appearance here and so obviously I
20 was not, you know, certainly in a position to
21 advise the Board.

22 And part of, you know, that is, you
23 know, to having an opportunity to review --
24 and I completely agree with Jolanta and Liz
25 that they should be provided with an

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1 opportunity take a look at the applicable
2 ordinance provisions.

3 Just one thing, though, when they
4 take a look. And it's been commented both by
5 a number of people, including Mike Lanzafama.
6 That when you -- when the Board professionals
7 now take a look at the ordinance and the point
8 was really raised nicely that this was
9 formerly the LI-2 zone and that the MU-0 zone
10 was created as an overlay.

11 Let me be clear about one thing.
12 When you create an overlay zone in zoning, you
13 cannot pick and choose. If you decide to
14 develop the property, my opinion on behalf of
15 my clients, if you decide -- if you decide to
16 develop the property based on the LI-2
17 requirements, then that's how you're
18 developing the property. If you decide
19 instead not to develop the property for
20 industrial use but rather to develop the
21 property pursuant to the MU-0 zone, those are
22 the provisions that apply. You cannot pick
23 and choose a little from each ordinance
24 pertaining to what's in there. You have to --
25 you make the decision of how you want to

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1 develop the property and then you apply the
2 ordinance accordingly.

3 MS. MAZIARZ: Okay. Well, except
4 that the permitted use section in the MU-0
5 zone clearly states that this is in addition.
6 It says "in addition to those uses already
7 permitted by the underlying zone district."

8 So, you know, we can sit here and
9 argue about this all night long and for
10 another month, but the bottom line is the
11 Board does have jurisdiction at this time.
12 The objector can object and then the Board
13 will have to evaluate at the conclusion of
14 this hearing how the Board is going to rule on
15 this application.

16 So we're not going to argue about
17 this anymore at this point. And I will --

18 MR. SIMON: I don't want to argue.

19 MS. MAZIARZ: Good. Very good. So
20 let's send it back to the Board for any
21 comments or questions from the Board.

22 CHAIRMAN HANDS: For me, right now,
23 just cutting to the chase a little bit. With
24 regard to the Board, we have an application.
25 We're going to have to -- you know, we'd be in

1 the same situation if it went to the Zoning
2 Board, right?

3 VICE CHAIRMAN JONES: I'm sorry,
4 Mr. Chair, I just want to remind you --

5 CHAIRMAN HANDS: Yes, 10:15. Thank
6 you.

7 So I think it's irrespective of
8 which Board, the situation is the application.
9 It now comes down to a -- we discussed
10 environmental. We've gone through that ad
11 nauseum.

12 Now this is simply the look and feel
13 of the application. And then there's a
14 suggestion, a detailed suggestion. Obviously
15 we asked initially for some comments about the
16 facades and, you know, outside architectural
17 design. So we certainly heard from
18 Mr. Kaufman some suggestions, which was
19 appreciated. Obviously the next thing -- you
20 know, whether we can debate that and discuss
21 that, and I think that one conversation is the
22 easiest of all the conversations.

23 The next thing is, how far do you go
24 to the design of the site plan itself? You
25 know, the retail building we know, we've had

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1 discussion, and there's potential
2 opportunities for discussions on that
3 building. So that's maybe a second
4 conversation at some point. And then you end
5 up with the more substantial conversation
6 about the actual layout, if you will, and how
7 far that is within the purview of discussion
8 and the Board's purview.

9 So maybe you can break it up into
10 two or three different areas of conversation,
11 but at the end of the day, regardless of the
12 Board, we have also commitments that we need
13 to make. We have zoning that we have to look
14 at artfully -- or not artfully, have done. I
15 think we would all say, potentially say that
16 the ordinance could be a little stronger. But
17 I think some of the intention on the grading
18 was correct. Their intention was to allow for
19 heights and the slopes to take effect to allow
20 for larger buildings in the back.

21 So I have to come down to a few
22 decisions to be made and discussion about how
23 far we can, if not alter, but potentially
24 amend a bit the actual site plan. Not the
25 uses. Not the density. Not the set -- you

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1 know, the principles, but just some very
2 specific points and see whether we end up in a
3 position that we can feel comfortable
4 collectively that we're doing right by all
5 parties.

6 That was a bit of a long-winded
7 comment or points, but I just wanted to lay
8 that out there.

9 And, first, are there any reactions
10 or comments from the Board before we go to the
11 public?

12 BOARD MEMBER PFEIL: I have a
13 comment, Mr. Chairman.

14 CHAIRMAN HANDS: Go ahead.

15 BOARD MEMBER PFEIL: When the
16 Planning Board was working to create this
17 overlay, we clearly permitted retail,
18 three-story buildings, and established an FAR
19 which this application has met, period.

20 CHAIRMAN HANDS: Thank you, Alan.

21 Yeah, John, please.

22 BOARD MEMBER FALVEY: I think it's
23 rather simple. The objector says it
24 doesn't -- you have to be before the Zoning
25 Board. The developer says they're proper --

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1 they're in front of the proper Board. Our
2 experts will give us their opinion and then
3 we'll vote on it.

4 You know, unfortunately, sometimes
5 ordinances and laws are written by people and
6 sometimes they screw up when they write them.
7 I don't know if that's the case here, but to
8 say something's clear, I don't know. It seems
9 like there's some evidence that it may not be
10 clear. But I say just continue, finish this
11 up, and you make a decision based on
12 everything submitted.

13 MAYOR RAE: You know, I agree with
14 John because, you know, to take this in the
15 direction that it's going, we're looking at
16 another ten meetings at least it seems to me.

17 CHAIRMAN HANDS: And that's my
18 point. I don't want to drag this out to be
19 honest.

20 MAYOR RAE: Right. So we've got the
21 objectors here saying we're in front of the
22 wrong Board. And then we've got this whole
23 other issue of design. And it seems to me
24 that the original -- the original rendition
25 pretty much feted the ordinance. It was -- it

1 was -- it was exemplary. We may not like how
2 it looked, but it was -- it was -- it -- it
3 feted it.

4 Last week Mr. Fourniadis said, hey,
5 come back with some other designs. I'll take
6 a look at them. I guess we did that tonight.
7 It's up to Mr. Fourniadis to say yes, no, I
8 like some, I like others. But as far as I'm
9 concerned, that's it. That's Mr. Fourniadis's
10 decision. And if he decides not to, then
11 we're going ahead with the original design.
12 And, you know, we'll hear from our -- we'll
13 hear from our own professionals as to the
14 merits of the objector's claims.

15 But to open this up more is just not
16 fruitful, I think.

17 BOARD MEMBER MALINOUSKY: I kind of
18 agree with Mayor Rae on that. If we had ten
19 developers with ten architects and ten
20 engineers and designers, we'd have ten
21 different designs. And it would be -- some of
22 us would be in favor of them and some of us
23 would have objections to them. They would all
24 be compliant so we'd have to make a decision
25 on that.

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1 BOARD MEMBER VERLEZZA: And I'm in
2 agreement, also.

3 CHAIRMAN HANDS: Thank you. My only
4 comment to that, the ten committees and stuff.
5 I think a lot of thought has gone into these
6 plans. I think they present enough of an
7 option in whether the facades, the retail
8 building and -- I think there's enough
9 elements there for us not to have to do that
10 and debate beyond what we're seeing as to what
11 actual attributes we may consider.

12 So no intention on my part, at least
13 my personal thought, to extend or get any
14 other input to that. I think that's something
15 we've got now enough elements to work with.

16 And at this point, I think it's
17 appropriate to say this seems like a good
18 point to wrap up the meeting. I hate to
19 belabor the meetings, but it sounds like there
20 is some work that our professionals need to do
21 and come back and just give us direct comments
22 on the objectors', the planner's comments, and
23 take it forward at the next meeting and see if
24 we can get to some resolution at the next
25 meeting.

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1 MR. SIMON: Mr. Chairman, could I
2 interrupt for just one second?

3 CHAIRMAN HANDS: Yes.

4 MR. SIMON: I'm just going to ask,
5 as a courtesy to Mr. Pessolano, I believe that
6 he hadn't completed at least opening it up to
7 the public to see if anyone had any questions
8 for Mr. Pessolano. Because if there are none
9 and his testimony is closed, then he wouldn't
10 necessarily have to come back at a next
11 meeting.

12 CHAIRMAN HANDS: Oh, I see. Okay.
13 Appreciate that.

14 MR. SIMON: You know, that's up to
15 the clients, but I know working with
16 professionals every night, that that's always
17 a consideration.

18 CHAIRMAN HANDS: Okay. That's a
19 fair comment, actually.

20 Let me just ask if anybody wants to
21 raise their hand who is not being represented
22 by Mr. Simon, wish to make a comment. I'd
23 like to try and keep those comments very
24 brief, if possible. If anybody wants to raise
25 their hand or hold their comments to the next

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1 meeting and not necessarily have to address
2 any comments to the planner.

3 MR. REGAN: Well, Mr. Chairman, this
4 is Frank Regan. I would request that
5 Mr. Pessolano come back at the next meeting
6 because obviously his testimony has raised a
7 number of issues with request to jurisdiction,
8 which obviously the Board planner needs to
9 look into and the applicant will also want to
10 address that issue and probably will have
11 further questions for Mr. Pessolano.

12 CHAIRMAN HANDS: Thank you. Thank
13 you for that. Actually, I think that's a fair
14 point.

15 Are you okay with that? And I
16 appreciate your comment, I appreciate Frank's
17 comment, but I have to agree with Frank.

18 MR. SIMON: No, Frank absolutely has
19 an opportunity to ask questions. That's no
20 doubt.

21 CHAIRMAN HANDS: Okay. Thank you.

22 MAYOR RAE: So how do you see this
23 progressing, then? Next week we're going to
24 come back. We're going to hear from our
25 professionals, right, on the objectors -- on

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1 the merits of the objector's discuss --
2 comments tonight.

3 CHAIRMAN HANDS: Right.

4 MAYOR RAE: Then where are we going
5 after that? Where do you see us?

6 CHAIRMAN HANDS: I'd certainly like
7 to see Prism, the applicant's, comments if
8 they have any. Of course, any finding --
9 maybe it could be superficial, I'll call it
10 superficial. I don't think there's any need
11 to go beyond the next meeting. So I think
12 we've got all the knowledge now, the
13 intelligence, the information has been
14 gathered. I don't see any reason why we can't
15 come to some conclusion -- personally,
16 personal opinion -- come to some conclusion at
17 the next meeting.

18 VICE CHAIRMAN JONES: Mr. Chairman,
19 I would concur with that. We should be in a
20 position to make a decision at our next
21 meeting.

22 BOARD MEMBER VERLEZZA: I'm in
23 agreement, also. This is like the
24 never-ending application. Ten meetings in, I
25 think we've gathered a tremendous amount of

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1 information and opinions. These meetings, I
2 know this is a big project, it's an important
3 project, there's a lot of different aspects to
4 it, but each meeting is not inexpensive to the
5 applicant nor the taxpayer here. And I think
6 at some point, we need to have the goal to
7 wrap this up. If it's possible within the
8 boundaries of the law and our jurisdiction on
9 the Planning Board to make a decision at the
10 next meeting, I think we should gear up to do
11 so.

12 CHAIRMAN HANDS: Thank you for that.

13 BOARD MEMBER PFEIL: I agree.

14 CHAIRMAN HANDS: Mr. Pfeil agrees
15 with that.

16 Okay. Jolanta or Deb, can I hand it
17 back to you to -- and bear in mind we still
18 got -- public is going to ask questions of the
19 testimony we heard as well.

20 Is there anything about carrying the
21 meeting to next time?

22 COORDINATOR COONCE: I think that --

23 MS. MAZIARZ: I --

24 COORDINATOR COONCE: Go ahead,

25 Jolanta. I'm sorry.

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1 MS. MAZIARZ: I'm sorry. Is that
2 question for the applicant? I understand that
3 the applicant's attorney may have an issue
4 with our next regularly scheduled meeting.

5 MR. REGAN: We'll agree to a
6 continuance till the 24th. I think we can
7 proceed.

8 MS. MAZIARZ: Okay.

9 CHAIRMAN HANDS: Very kind. Thank
10 you, Frank. Appreciate that.

11 COORDINATOR COONCE: So, Mr. Regan,
12 you will send me a letter with the extension
13 through the end of the month?

14 MR. REGAN: Yes.

15 THE REPORTER: I'm sorry, I can't
16 hear you, Mr. Fourniadis.

17 MR. FOURNIADIS: I'm sorry, I
18 thought I was muted.

19 THE REPORTER: You're not.

20 CHAIRMAN HANDS: We heard what he
21 said.

22 THE REPORTER: I didn't.

23 CHAIRMAN HANDS: Let me just finish
24 this off by saying I thank everybody's
25 patience through the whole process and I

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1 appreciate the effort that people are putting
2 in and the interest of everybody in this.
3 Because it is a major project for the town,
4 set to see for many years to come. It's
5 prudent that we do a good and thorough job.
6 So I appreciate everybody's time and patience.

7 BOARD MEMBER SANDOW: Do we not
8 already have a different hearing scheduled for
9 the next hearing?

10 COORDINATOR COONCE: We do. I don't
11 believe that applicant has noticed. If the
12 applicant has noticed, then I will have to let
13 them know that we will have to carry them to
14 the next following meeting in December.

15 BOARD MEMBER SANDOW: I think at the
16 last meeting of this Board, you said that they
17 already had noticed for the 17th or 24th or
18 whatever.

19 COORDINATOR COONCE: I don't -- I'm
20 not a hundred percent sure that they noticed
21 yet. I'm not.

22 BOARD MEMBER SANDOW: Thank you.

23 CHAIRMAN HANDS: Okay. Yeah, sorry,
24 Alan. Oh, I'm sorry, I thought you were going
25 to say something.

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1 So, again, I appreciate everybody's
2 time and patience. Then both matters we will
3 hear the matters next week. I think --

4 COORDINATOR COONCE: I'm sorry,
5 Mr. Chairman, I need to interrupt because we
6 haven't had a motion and second to carry the
7 application. The Board needs to make that
8 motion.

9 MS. MAZIARZ: Yes, to that date.

10 CHAIRMAN HANDS: Anybody wish to
11 motion for continuation to the next meeting.

12 BOARD MEMBER PFEIL: Motion.

13 VICE CHAIRMAN JONES: Second.

14 COORDINATOR COONCE: Mr. Pfeil,
15 motion; Vice-Chairman Jones seconded. All in
16 favor?

17 (Whereupon, a voice vote was taken;
18 chorus of "ayes" heard.)

19 COORDINATOR COONCE: Any opposed?
20 Motion carries. Applicant is carried to
21 November 24th with no further notice required
22 by the applicant.

23 CHAIRMAN HANDS: Okay. With that
24 said, let me leave that. Unless there's any
25 other business, let me have a motion to close

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1 the meeting tonight.

2 BOARD MEMBER PFEIL: So moved.

3 MAYOR RAE: Second.

4 CHAIRMAN HANDS: All in favor?

5 (Whereupon, a voice vote was taken;

6 chorus of "ayes" heard.)

7 CHAIRMAN HANDS: Thank you, all.

8 COORDINATOR COONCE: Thank you.

9 Have a good night.

10 (Whereupon, the hearing on this
11 application was adjourned at 10:29 p.m. to
12 Tuesday, November 24, 2020, 7:30 p.m.)

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C E R T I F I C A T E

I, BRIDGET LOMBARDOZZI, Notary Public
and Certified Shorthand Reporter of the State
of New Jersey, do hereby certify that the
foregoing is a true and accurate transcript of
the testimony as taken remotely
stenographically by and before me at the time,
place and the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither
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